



# groove associates limited Terms and Conditions of Sale

## 1. Definitions

1.1 In these conditions the following words shall have the following meanings:-

the "Company" means Groove Associates Ltd. (Company number 925679, VAT number 108 3815 78).

the "Goods" means the articles that are specified in the Company's quotation or order acknowledgment.

the "Buyer" means the corporate entity firm or person to whom the Goods are supplied by the Company.

the "Price" means the price of the Goods, excluding VAT, carriage, duty, packaging, and insurance costs.

the "Conditions" means the standard terms and conditions as set out in this document.

the "Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods, comprising the terms set out in clause 2.3.

the "Warranty Period" means the period of six months from the delivery of the Goods.

1.2 Any reference in these Conditions to legislation shall be construed as a reference to that legislation as amended, re-enacted, or extended from time to time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Words in the singular include the plural and words in the plural include the singular. Words and phrases like "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words.

## 2. Quotations, Orders & Contract Formation

2.1 These Conditions shall apply to all supplies of Goods by the Company to the Buyer, to the exclusion of any other terms and conditions the Buyer might seek to impose, even though such other terms and conditions may be submitted in a later document or purport to exclude or supersede any Conditions inconsistent with them.

2.2 The quote that the Company provides to the Buyer comprises an invitation to treat, which is open for a period of 30 days only from the date thereof, provided that the Company has not previously withdrawn it. Any order issued by the Buyer is an offer to buy the Goods subject to these Conditions and shall be subject to acceptance by the Company. A Contract will only be formed when the Company has accepted the Buyer's offer to buy in writing.

2.3 Each Contract shall comprise these Conditions, the terms set out in the Company's quotation and the Company's order acceptance and any additional terms that are agreed in writing as applicable.

2.4 If any Contract contains provisions which conflict with these Conditions, those provisions of the Contract will prevail to that extent, except nothing shall prevail over the exclusions and limitations of the Company's liability in these terms unless the provision expressly refers to those exclusions and states that it prevails over them.

2.5 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

2.6 No variation of the Conditions or the Contract is permitted unless accepted in writing by an authorised Company representative.

## 3 Price

3.1 The Price of the Goods shall be the Price stated on the quote, which is open for 30 days, or the Price as stated on the Company's order acknowledgement.

3.2 Unless otherwise stated all Prices are net ex-works, exclusive of Value Added Tax and all costs in relation to packaging, duty, carriage, and insurance, all of which the Buyer shall pay in addition to the Goods.

3.3 The Company reserves the right by giving notice to the Buyer at any time before delivery to increase the Price of the Goods to reflect any changes in delivery dates, specification, or directions for the Goods that is requested by the Buyer, or any delay caused by any instructions by the Buyer or delay in delivery of free issue by the Buyer, or failure of the Buyer to give the Company adequate information or instructions.

## 4 Terms of Payment

4.1 The Buyer shall pay the Price of the Goods without any set-off, withholding, deduction, abatement or counterclaim within 30 days of the date of the invoice, notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Buyer.

4.2 Time for payment shall be of the essence.

4.3 No payment shall be deemed to have been received until the Company has received cleared funds.

4.4 The Company shall have an action for the Price notwithstanding that title in Goods has not passed to the Buyer.

4.5 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

4.5.1 cancel the relevant Contract or suspend or cancel any deliveries without any liability to the Buyer; and/or

4.5.2 charge interest at the statutory rate applicable; and/or

4.5.3 recover the Goods in accordance with clause 8.3.

## 5 Delivery

5.1 Delivery of the Goods shall take place at the Company's place of business.

5.2 Where the Buyer requires the Goods to be delivered to their own premises or that of a third party, then the following provisions shall apply:-

5.2.1 all costs of carriage and packaging shall be borne by the Buyer;

5.2.2 the Company shall not be liable for any damage incurred in transit, however caused;

5.2.3 the Company shall use its preferred carrier unless the Buyer states otherwise in writing;

5.3 All dates given for delivery of the Goods are approximate only and the Company shall not be liable for any loss, damage, cost or expense caused directly or indirectly by any reasonable delay in delivery. Time for delivery shall not be made of the essence by notice.

5.4 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

5.5 The Company retains the right to suspend deliveries where payment for any order remains overdue.

5.6 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

## 6. Cancellations & Returns

6.1 No order that has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on the terms that the Buyer shall indemnify the Company in full against all losses, costs, charges and expenses incurred by the Company as a result of the cancellation.

6.2 Goods supplied in accordance with the Contract cannot be returned without the prior written agreement of the Company. Duly authorised returns shall be sent to the Company's premises at the Buyer's expense.

6.3 Stocked Goods with prior permission by the Company may be returned subject to a 20% charge.

## 7 Non-Delivery

7.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

7.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

7.3 Any liability of the Company 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 raised for such Goods.

## 8 Risk & Property

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery of the Goods in accordance with clause 6.1.



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**8.2** Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds all sums due:

**8.2.1** for those Goods (including VAT and other taxes and duties payable to the Company); and

**8.2.2** all other sums then due from the Buyer under all Contracts.

**8.3** Until such time as the property passes to the Buyer pursuant to clause 8.2, the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

### **9. Warranties & Liability**

**9.1** The Company warrants that the Goods:

**9.1.1** are on delivery and shall remain for the Warranty Period reasonably free from defects in design, materials and workmanship;

**9.1.2** conform in all material respects to any specification agreed in the Contract;

Contracts shall not be regarded as sales by sample even if the Company has provided a sample to the Buyer. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded except to the extent prohibited by law.

**9.2** If during the Warranty Period there is any material breach of the warranties in clause 9.1 and the claim is notified in accordance with clause 9.9, the Company will, at its option, repair or replace the relevant item of Goods (or any defective part), or offer a refund of all or a fair or reasonable part of the Price paid for the relevant item (against return of the relevant item at the cost of the Buyer). If the Company complies with this obligation it shall have no further liability in respect of, or arising from the relevant Goods.

**9.3** The above warranties are given by the Company subject to the following conditions:

**9.3.1** the Company shall be under no liability in respect of any defect in the Goods arising from any instruction given or specification supplied by the Buyer;

**9.3.2** the Company shall be under no liability in respect of any defect arising from wear and tear, wilful damage, accident, negligence, abnormal working conditions, failure to follow the Company's instructions, misuse or alteration of the Goods without the Company's written approval;

**9.3.3** the Company shall be under no liability under clause 9.2 if the total Price of the Goods has not been paid by the due date for the payment;

**9.3.4** the above warranties do not extend to Goods not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any manufacturer's warranty or guarantee that the Company is entitled to transfer to the Buyer;

**9.3.5** the Company shall not be liable to the Buyer hereunder for any defects in the Goods where these were brought to the attention of the Buyer before the completion of the Contract;

**9.4** All claims notifiable under clause 9.2 must be notified to the Company no later than 30 days after the Buyer first becomes aware of the circumstances giving rise to the claim.

**9.5** Except in respect of liability referred to in clause 9.8, the Company's liability however arising for:

**9.5.1** all claims in aggregate arising out of or in connection with the Contract and/or the Goods shall not exceed a sum equal to the Price of the Goods;

**9.5.2** (a) any loss of or damage to profit, revenue, anticipated savings, data or use; or (b) any indirect or consequential loss or damage is excluded.

**9.6** The term "however arising" covers all causes and actions giving rise to liability of the Company arising out of or in connection with the Contract and/or the Goods (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract or after its entry) negligence or other tort, breach of statutory duty, renunciation, repudiation or other breach of contract, restitution or otherwise; (ii) whether arising under an indemnity (if any); (iii) whether caused by any total or partial failure or delay in supply of the Goods or defective Goods; and (iv) whether deliberate (but not with malicious intent) or otherwise, however fundamental the result.

**9.7** The exclusions and limitations of liability contained in these Conditions and in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Buyer notifies the Company of the possibility of any greater loss or damage, but shall not apply to the extent prohibited or limited by law, including liability for death and personal injury caused by the Company's negligence and for fraud and fraudulent misrepresentation.

**9.8** The Company shall not be liable to the Buyer for any claim unless made with reasonable details in writing to the Company without unreasonable delay and in any event no later than 3 months, or such longer period as may be reasonable in the circumstances, after the date the claimable event first came (or ought reasonably to have come) to the Buyer's notice.

### **10. Free Issue**

**10.1** Items supplied by the Buyer shall be of suitable quality and shall be provided free of charge in sufficient quantities and at the times required by the Company. Any defect in items supplied by the Buyer shall not entitle the Buyer to rescind or terminate the Contract, reject the Goods, make deductions from the Price or claim damages in respect of such defect and the Buyer shall indemnify the Company and keep it indemnified from and against all action, demands, claims, proceedings, losses or costs arising from the supply of defective items by the Buyer.

**10.2** The Company shall require a certificate of conformity with items supplied by the Buyer where applicable.

### **11. Force Majeure**

**11.1** The Company shall have no liability in respect of failure to deliver or perform or delay in delivering or performing any obligations under the Contract due to any cause outside the reasonable control of the Company including but not limited to acts of God, fire, floods, war and civil disturbances or riot, acts of Government, currency restriction, strikes or other labour disputes (whether or not involving the employees of the Company), unavailability of materials or failure of supplier, carrier or subcontractor to deliver on time.

### **12. Intellectual Property Rights**

**12.1** No intellectual property rights of the Company are transferred to the Buyer and no licences to use any intellectual property rights of the Company are granted to the Buyer except as may be necessary for the usual use of the Goods supplied.

**12.2** The Buyer shall indemnify the Company against all costs, claims and damages incurred or threatened arising out of any alleged infringement of patents, trade mark, copyright or other intellectual property right occasioned by the manufacture or sale of the Goods made to the specification of the Buyer. The Company does not warrant and the Buyer is responsible for ensuring that its use of the Goods will not infringe any patent or other intellectual property rights of a third party.

### **13. Insolvency of the Buyer**

**13.1** This clause applies if:

**13.1.1** the Buyer makes any arrangement with its creditors, is unable to pay its debts as they fall due, is wound up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), is the subject of an administration order or goes into liquidation, or otherwise becomes insolvent or any step is taken, whether by the Buyer or any other person, towards any of the foregoing events; or

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

**13.1.3** the Buyer ceases, or threatens to cease, to carry on business; or

**13.1.4** the Company reasonably expects that any of the events mentioned above is about to occur and the Company notifies the Buyer accordingly.

**13.2** If clause 12.1 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries, without any liability to the Buyer and, if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. In addition the Company have the right to enter the premises of the Buyer and repossess the property

### **14. Export Terms**

**14.1** The following provisions of Clause 14 shall apply for all Goods exported from the United Kingdom.



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**14.2** The Buyer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the UK and the importation of the Goods into the country of destination and for the payment of any duties on them.

**14.3** the Buyer must not export the Goods in violation of any applicable laws, including those of the United Kingdom, European Union or the United States.

**14.4** Unless otherwise agreed in writing the Buyer shall be responsible for all charges for export delivery.

**14.5** The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which ought reasonably to have been apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**14.6** The Company may require payment of all amounts due by irrevocable letter of credit opened by the Buyer in the Company's favour and confirmed by a bank acceptable to the Company unless otherwise agreed in writing on or before the acceptance of the Buyer's order and the Buyer will be responsible for payment of all banking charges and costs in respect of the letters of credit.

**14.7** The Buyer shall be responsible for all banking charges in respect of the payment for the Goods.

### **15. Restriction on Hazardous Substances**

**15.1** Unless certified with a certificate of conformity provided by the Company, the Goods may not be RoHS compliant (Restriction of Hazardous Substances 2002/95/EC).

### **16 Hazardous Materials**

**16.1** The Buyer shall be responsible for ensuring they have acquainted themselves with the nature of the Goods ordered from the Company and of any hazards involved. Furthermore, they have been deemed to have taken any precautions required under the Health & Safety at Work regulations.

### **17. Entire Agreement**

**17.1** These Conditions, together with the further Contract terms referred to in clause 2.3, constitute the entire agreement and understanding of the parties and supersede any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in these Conditions and the Contract.

**17.2** Each of the Company and the Buyer acknowledges and agrees that:

**17.2.1** in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Contract or not) which is not expressly set out in these terms and/or the Contract;

**17.3** whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, and other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and shall not form part of the Contract and the Company shall not be bound thereby; and

**17.3.1** the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Contract shall be for breach of Contract under the terms of the Contract.

**17.3.2** Nothing in this clause 15 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

### **18. General**

**18.1** Any notice required or permitted to be given under these Conditions shall be in writing addressed to the 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 one giving the notice. Notice served by hand or by facsimile shall be deemed to be served immediately provided that in the case of notices served by facsimile a successful transmission receipt is obtained. Notices served by first class post shall be deemed served in two days after posting if sent from a UK address or seven days if sent from an overseas address.

**18.2** The Company may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract.

**18.3** The Contract is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under the Contract.

**18.4** 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. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**18.5** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

**18.6** The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**18.7** The Contract shall be governed and construed in accordance with the laws of England and all disputes arising out of or in connection with the Contract shall be submitted to the exclusive jurisdiction of the English courts.