

**ESPERSEN UK LIMITED**  
**CONDITIONS OF SALE (2023 Edition)**

**The Buyer's attention is drawn in particular to condition 12.**

**1. INTERPRETATION**

1.1 In these Conditions the following words shall have the following meanings:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

“**The Buyer**” means the person, firm or company who purchases the Goods from the Seller.

“**Conditions**” means the standard terms and conditions of sale set out in this document as amended from time to time in accordance with Condition 2.3.

“**Contract**” means the contract between the Seller and the Buyer for the sale and purchase of the Goods, in accordance with these Conditions.

“**Goods**” means any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

“**Group**” means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“**Order**” means the Buyer's purchase order form, the Buyer's written acceptance of the Seller's quotation or overleaf as the case may be.

“**Seller**” means Espersen UK Limited (registered number 08109499).

1.2 Words in the singular include the plural and vice versa.

1.3 A reference to **writing** or **written** includes emails.

**2. APPLICATION OF CONDITIONS**

2.1 These Conditions shall cancel and supersede any earlier version or edition of conditions of sale of the Seller.

2.2 These Conditions shall govern the Contract to the exclusion of any terms or conditions which the Buyer purports to apply or incorporate under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing and the Buyer waives any right which it might have to rely on such terms or conditions.

- 2.3 No variation to these Conditions or any representation about the Goods shall have effect unless expressly agreed in writing and signed by a duly authorised representative of the Seller.
- 2.4 Each Order for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.5 No Order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of Order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer or the Seller notifies the Buyer that the Goods are ready for collection, at which point the Contract shall come into existence.
- 2.6 Any quotation is given on the basis that no contract will come into existence until the Seller despatches a written acknowledgement of the Order to the Buyer. Any quotation is valid for the period stated in the quotation, provided that the Seller has not previously withdrawn it.

### **3. FORECASTS**

- 3.1 Where the Seller has agreed to forecasts from the Buyer, the following Conditions shall apply.
- 3.2 The Buyer shall give the Seller not less than 14 days before the start of each month, its written forecast of the Goods it expects to purchase from the Seller during the following month. The Buyer shall act in good faith when forecasting its requirements for Goods.
- 3.3 If the Seller expects that it will be unable to meet the Buyer's forecasted requirements, the Seller shall inform the Buyer as soon as practicable.
- 3.4 If the Seller accepts a forecast provided by the Buyer under Condition 3.2 and the Buyer then places an Order for an amount of Goods in excess of such forecast, the Seller shall not be obliged to provide such excess quantity of Goods, but at the Seller's sole discretion may provide such excess Goods.
- 3.5 If the Seller accepts a forecast provided by the Buyer under Condition 3.2 and the Buyer then places an Order for an amount of Goods which represents less than 95% of such forecast, the Buyer shall be liable to pay Seller an amount equal to the difference between the value of Goods in the Order and the value of the forecasted Goods, less any proceeds of sale received by the Seller in disposing of the forecasted Goods not ordered by the Buyer.

#### **4. DESCRIPTION**

- 4.1 The description of the Goods shall be as set out in the Seller's quotation or acknowledgement of the Order.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues 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 the sale shall not be a sale by sample.

#### **5. DELIVERY**

- 5.1 Unless otherwise agreed in writing by the Seller (including if the Buyer collects the Goods from the Seller), delivery of the Goods shall be to the address set out in the Seller's acknowledgement of Order or quotation.
- 5.2 Completion of delivery shall occur on the arrival of the Goods at the location as set out in Condition 5.1, unless the Buyer collects the Goods from the Seller in which case delivery shall occur on the loading of the Goods at the Seller's premises.
- 5.3 Any date specified by the Seller for delivery of the Goods is an estimate only and time for delivery is not of the essence. If no date has been so specified, delivery will be within a reasonable time. The Seller shall not be liable for any delay in delivery of the Goods that is caused by circumstances outside the control of the Seller or which is due to the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 Subject to the other provisions of these Conditions, the Seller shall not be liable for any loss (including but not limited to loss of profit and indirect or consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay by the Seller in the delivery of the Goods nor will any delay entitle the Buyer to terminate the Contract unless the delay exceeds 30 days beyond the delivery date agreed between the Seller and the Buyer. Termination of the Contract shall be the Buyer's sole remedy in such circumstances.
- 5.5 The Seller may deliver the Goods by separate instalments and invoice the Buyer for the price of the Goods delivered. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.6 Without prejudice to Condition 5.5, if the Seller agrees to permit the Buyer to call off the Goods against the Contract:

- (a) the Buyer agrees to call off the Goods within the period agreed with the Seller or if no such period has been agreed, within a reasonable period of time; and
- (b) the Seller will invoice the Buyer for the price of the Goods of each call off but shall be entitled to invoice the Buyer for the balance of the Contract price at any time, notwithstanding that the Buyer may not have called off all the Goods the subject of the Contract.

5.7 Where the Goods are to be delivered or called off in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.8 If for any reason the Buyer will not accept delivery of any of the Goods, fails to collect the Goods within 2 days after being notified by the Seller that they are ready for collection or fails to call off the Goods in accordance with Condition 5.6 (where the Seller has agreed to such call off), or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to the Buyer and the Seller may store them until actual delivery and the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

## **6. SHORTFALLS AND NON-DELIVERY**

6.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller'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.

6.2 The Buyer agrees to accept and pay at the Contract rate for plus/minus 5% of the quantity of the Goods ordered by the Buyer. Subject thereto, the Seller shall not be liable for any shortfall in the delivery of Goods unless written notice is given to the Seller within 3 days of delivery. Any liability of the Seller for any shortfall in the delivery of the Goods shall be limited to making up the shortfall in the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6.3 The Seller shall not be liable for any non-delivery of Goods unless written notice is given to the Seller within 7 days of the date of the invoice submitted to the Buyer in respect of the non-delivered Goods. Any liability of the Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **7. PRICE**

- 7.1 Unless otherwise agreed in writing by the Seller, the price for the Goods shall be the Seller's delivered price set out in the Seller's acknowledgement of Order or quotation.
- 7.2 The price for the Goods shall be exclusive of any value added tax which the Buyer shall pay in addition on or before the date it is due to pay for the Goods.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer and the Buyer shall pay in addition on or before the date it is due to pay for the Goods.
- 7.4 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other costs);
  - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or
  - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

## **8. PAYMENT**

- 8.1 Subject to Condition 8.2, the Seller's invoices shall be paid in pounds sterling within 28 days of the date of invoice. Time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received the full amount in cleared funds.
- 8.2 All sums payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 8.3 The Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the rate of 3% above the Overnight London Interbank Offered Rate (LIBOR) as published by the British Bankers Association for the day for which LIBOR is to be determined (or the immediately preceding banking day if that day is not a banking

day), accruing on a daily basis until payment is made, whether before or after judgment.

**9. RISK AND OWNERSHIP**

9.1 The Goods shall be at the risk of the Buyer from the completion of delivery, determined in accordance with Condition 5.2 (or if relevant, Condition 5.8).

9.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full in cash or cleared funds:

- (a) all sums payable in respect of the Goods and all other sums which are or which become payable to the Seller from the Buyer on any account including any interest on such sums; and
- (b) The Buyer resells the Goods in which case ownership to the Goods shall pass to the Buyer at the time specified in Condition 9.4.

9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) store the Goods (at no cost to the Seller) separately to other goods of the Buyer or any third party in a way that they remain readily identifiable as the Seller's property;
- (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- (d) notify the Seller immediately if it becomes subject to any of the events listed in Condition 9.5; and
- (e) give the Seller such information relating to Goods as the Seller may require from time to time.

9.4 The Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on the Buyer's own behalf in the ordinary course of the Buyer's business at full market value to a third party purchaser (and not to an Affiliate of the Buyer or any member of the Buyer's Group) and the Buyer shall deal as principal (and not as the Seller's agent) when making such sale, and ownership of the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

9.5 The Buyer's right to possession of the Goods shall terminate immediately and all sums shall become due and payable immediately and the Buyer agrees that the Seller shall have the right to rescind or terminate the Contract if:

(a) The Buyer takes any step or action in connection with its entering into administration, convenes a meeting of or enters into any composition or arrangement with its creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) The Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

9.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

9.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

9.8 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

9.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 9 shall remain in effect.

## **10. WARRANTY**

- 10.1 The Seller warrants (subject to the other provisions of these Conditions) that upon delivery the Goods will comply with their description and any applicable specification of the Seller for the Goods.
- 10.2 The Seller shall not be liable for a breach of the warranty in Condition 10.1 if:
- (a) The Buyer does not give written notice of any defect to the Seller within 7 days of delivery;
  - (b) The Seller is not given a reasonable opportunity to examine the Goods and the Buyer (if asked to do so by the Seller) does not return the Goods to the Seller's place of business for the examination to take place there;
  - (c) The Buyer resells or uses the Goods after giving notice of any defect;
  - (d) the defect arises because the Buyer failed to follow the Seller's instructions as to the storage or use of the Goods or good trade practice; or
  - (e) the defect arises as a result of the Buyer's wilful damage, negligence or abnormal storage or working conditions.
- 10.3 Subject to Condition 10.2, if any of the Goods do not conform with the warranty in Condition 10.1 the Seller shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate and shall have no further liability for breach of the warranty in Condition 10.1 in respect of such Goods. If the Seller so requests, the Buyer shall at the Seller's reasonable expense return the Goods which are defective to the Seller.

## **11. TERMINATION**

- 11.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- (a) The Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;
  - (b) in circumstances arising as set out in Condition 9.5;
  - (c) The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) The Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if



the Buyer becomes subject to any of the events listed in Condition 11.1(a) to Condition 11.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment or the Buyer exceeds any credit terms which have been agreed by the Seller.

- 11.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **12. LIMITATION OF LIABILITY**

- 12.1 Subject to Conditions 5, 6 and 10, the following provisions of Condition 12 set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any:
  - (a) breach of these Conditions;
  - (b) use made or resale by the Buyer of any of the Goods, or of any product incorporating the Goods; and
  - (c) representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the Seller:
  - (a) for death or personal injury caused by the Seller's negligence or negligence of its employees, agents or sub-contractors;
  - (b) defective products under the Consumer Protection Act 1987;
  - (c) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability;

- (d) for fraud or fraudulent misrepresentation; or
- (e) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 12.4**

12.4 Subject to Conditions 12.2 and 12.3:

- (a) The Seller shall not be liable to the Buyer whether in contract, tort (including negligence) breach of statutory duty, or otherwise for economic loss, loss of profit, loss of anticipated savings, goodwill or business opportunity or for production downtime or any type of indirect or consequential loss or damage or any costs, expenses or other claims which arise out of or in connection with the Contract; and
- (b) The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the greater of (i) the total sums paid by the Buyer to the Seller in respect of the Goods in the 12 months immediately preceding the event or circumstances giving rise to the liability; or (ii) £5,000.

**13. EVENTS BEYOND THE SELLER'S CONTROL**

The Seller shall not be in breach of the Contract nor liable for delay in performing, or failure to perform any of its obligations under it if such delay or failure results from events or circumstances beyond the reasonable control of the Seller including, but not limited to acts of God, governmental actions or restrictions, war or national emergency, terrorist attack, riot, civil commotion, fire, explosion, flood, drought, earthquake, storm, snow, strong winds, hurricane or other natural disaster epidemic, pandemic, public health emergency, lock-outs, strikes or other labour disputes (whether or not relating to its workforce), labour shortages, supplier failure, interruption or failure of utility service, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, nuclear, chemical or biological contamination or sonic boom. In such circumstances the Seller shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six months, the party not affected may terminate an affected Contract by giving 30 days' written notice to the affected party.

**14. ETHICAL TRADING AND ANTI-BRIBERY COMPLIANCE**

14.1 In accordance with the Seller's commitment to sustainable and ethical business practices the Buyer warrants and represents that in connection with any matter arising

under or pursuant to any Contract it shall (i) protect its workers' rights, including by ensuring: safe and hygienic working conditions, freedom of association, living wages are paid, working hours are not excessive, no discrimination is practised, no harsh or inhumane treatment is allowed and no child labour is used; (ii) ensure environmental management programmes are in place (iii) (without prejudice to Condition 14.2) not offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier; and (iv) not make or offer, directly or indirectly, any payment, gift or other advantage to a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business

14.2 In addition, the Buyer:

- (a) shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) shall have and shall maintain in place throughout its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- (c) shall on request by the Seller certify to the Seller in writing signed by an officer of the Buyer, compliance with this Condition 14.2 by the Buyer and all persons associated with it. The Buyer shall provide such supporting evidence of compliance as the Seller may reasonably request

## 15. COMPLIANCE WITH DATA PROTECTION LAW

Each party shall, at its own expense, comply with all applicable legislation and regulations for the time being in force in the UK or any part of it, pertaining to data protection, data privacy, data retention and/or data security including but not limited to the Data Protection Act 2018 and the Privacy and Electronic Communications Directive (Directive 2002/58/EC) as they may change from time to time, and with any conditions binding on it in any related licences, registrations, permits and approvals.

## 16. CONFIDENTIALITY

16.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to the Buyer by the Seller or its agents, or are created by the Buyer in performing its obligations under a Contract or in fulfilling an Order and any other confidential information concerning the Seller's business, affairs, products, customers, clients or suppliers which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Seller

and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

- 16.2 The Buyer may only disclose the Seller's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Before any such disclosure is made, the Buyer shall (to the extent permitted by law) use its best efforts to inform the Seller of full circumstances of the required disclosure and the confidential information that must be disclosed.
- 16.3 The Buyer shall not use the Seller's confidential information for any purpose other than to perform its obligations under a Contract.

## **17. GENERAL**

- 17.1 The Buyer shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it without the prior written consent of the Seller.
- 17.2 The Seller shall be entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it to any person, firm or company.
- 17.3 The Buyer shall not use the Seller's name, logo or other intellectual property rights of the Seller in advertising or publicity without the Seller's prior written consent.
- 17.4 If any provision or part of a 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.
- 17.5 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.7 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether or not under the Contract.

- 17.8 Any notice 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 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 notice.
- 17.9 Subject to Conditions 17.1 and 17.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 17.10 Nothing in the Contract excludes the statutory rights of consumers.
- 17.11 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.