

AMS LEISURE SUPPLIES LTD

Conditions of Sale

1. General

The following conditions of sale apply to contracts made with AMS Leisure Supplies Ltd, hereinafter called AMS, and any division thereof. All quotations are made and orders accepted subject to the following conditions of sale. No conditions or terms of the customer shall apply. No addition to or alteration to or alteration or modification of these conditions of sale shall have effect unless such addition, alteration or modification is expressly accepted by AMS in writing and signed by a duly authorised representative.

2. Acceptance

No contract is concluded until the customer's order is accepted in writing by AMS. Unless previously withdrawn, or otherwise specified by AMS in writing, quotations (where issued) are open for acceptance within thirty days from the date on which they are made.

3. Information

- a) Descriptions, drawings, specifications and other particulars given by AMS in catalogues, price lists and elsewhere are not binding on AMS unless specifically confirmed in writing as being applicable to the goods supplied.
- b) Should any information or data supplied by the customer to AMS for the preparation of a quotation prove not to be sufficient or accurate, AMS reserves the right to amend the quotation and (where applicable) to make any alteration or amendment in the quoted price to cover any resulting increase in cost.

4. Prices

- a) Unless otherwise indicated all prices include the cost of delivery within the United Kingdom. AMS shall be responsible for the cost of insurance during carriage within the United Kingdom.
- b) The customer shall pay all other duties, charges and taxed (if any) chargeable in respect of the supply of the goods to the customer.
- c) AMS reserves the right to vary its prices without notice and unless otherwise expressly specified in the quotation, goods will be supplied and invoiced at the price ruling at the time of despatch.
- d) Prices quoted by AMS are for the quantities and on the terms stipulated in the quotation and shall be subject to variation if the quantities or the terms in question are in any way amended.
- e) Unless otherwise indicated, all prices are quoted exclusive of VAT.
- f) Unless otherwise stated, export prices do not include freight costs outside the United Kingdom and these will be added to the invoice.

5. Delivery

- a) Unless otherwise indicated, delivery shall take place at the agreed destination within the United Kingdom except, if the customer collects the goods, delivery shall take place when the goods are loaded on the collection vehicle. In the case of export orders, unless otherwise agreed, delivery shall take place at a destination in the United Kingdom appointed by the customer and agreed by AMS.
- b) In all cases dates quoted by AMS are subject to confirmation by AMS at the time an order is accepted.
- c) AMS will use its best endeavours to deliver the goods promptly or in accordance with the terms stated, but all delivery times or dates (whether confirmed or not) must be treated as estimates only, and AMS shall be under no liability whatsoever for any failure or delay in despatch or delivery nor for any loss or damage whatsoever arising there from.
- d) If the goods are not taken up or delivered by the quoted delivery date by reason of any default of the customer, AMS may either treat the contract as repudiated or alternatively store the goods at the customer's risk and expense.
- e) If the goods and/or services are delivered/completed in instalments, AMS shall be entitled to invoice for each instalment when delivered/completed and payment shall be due in respect of each instalment delivered/completed non-delivery/non-completion of other instalments or other default by AMS.
- f) Where the agreement provides for delivery by instalments, each instalment shall constitute a separate contract and any failure or defect in any one or more instalments delivered shall not entitle the customer to repudiate the agreement nor to cancel any subsequent instalments.
- g) The customer shall not be entitled to reject the goods by reason only of short delivery.
- h) If for any cause whatsoever beyond its control, AMS's normal production of goods required for the performance of the contract with the customer and other comparable contracts is reduced, AMS may proportionally reduce the quantities to be supplied to the customer without incurring liability for any loss or damage thereby suffered by the customer.

6. Settlement Terms

- a) Liability for payment arises on delivery. Unless otherwise specified in the quotation or otherwise in writing, invoices for goods supplied must be paid within thirty days from the date of the invoice. No deductions are allowed. If prompt payment terms are offered on the invoice then subject to those terms being met the discount may be deducted from the payment.
- b) AMS reserves the right to charge interest on overdue accounts at a rate per annum of eight percent above Lloyds Bank base rate at the time payment is due.
- c) Payment shall be due whether or not property in the goods has passed by virtue of condition 7 and AMS shall accordingly be entitled to sue for the price once the same is due even if property in the goods has not passed.
- d) Any default by the customer in making payment on the due date shall entitle AMS (without prejudice to its other rights) to suspend deliveries to the customer.

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7. Property and Risk

- a) Risk shall pass to the customer on delivery to the appointed destination within the United Kingdom.
- b) Subject to condition 14 property in the goods will only pass to the customer when all sums owing to AMS (including any interest under Clause 6(b) under this or any other contract between the customer and AMS have been received in full by AMS and until that date the customer is required to store and mark the goods in such a way that they are readily identifiable as the property of AMS except that the customer shall be entitled to sell the goods in the ordinary course of its business.
- c) On the occurrence of any of the events specified in condition 15(a) or if AMS shall reasonably consider for any reason that its goods are in jeopardy:
 - I) the customer's authority to sell the goods which belong to AMS shall end and all goods belonging to AMS shall be delivered to AMS (at the customer's expense) up to the value of the sums owing to AMS from the customer and
 - II) AMS by its employees or agents shall be entitled to enter upon or into any land, buildings, vehicles or vessels where the goods are stored to retake possession of those goods which remain the property of AMS up to the value of the sums owing to AMS from the customer and
 - III) all proceeds of sale of those goods belonging to AMS sold by the customer shall be paid into a separate bank account and held on behalf of AMS. Where the goods are incorporated into another product before being sold to the customer, the customer shall pay into the separate bank account such proportion of the proceeds of sale of that other product as represents the value of the goods belonging to AMS.

8. Inspection and Testing

Goods supplied by AMS are submitted to standard inspection and testing before despatch. Any additional or special tests which AMS may agree to carry out at the request of the customer may be charged for extra.

9. Recommendations

Recommendations regarding the use and/or performance of the goods are based on tests and experience considered to be reliable but as the conditions to which the goods may be subject to when in service are beyond the control of AMS, AMS cannot guarantee such performance or results obtained from any such use.

10. Return of Goods

- a) If after acceptance of an order some exceptional circumstances arise in which it is desirable for the customer to modify or cancel his order, AMS will do its best to assist but shall be under no obligation to accept the amendment or cancellation of the order and must be indemnified against any loss (including loss of profit) in which AMS may thereby be involved. Goods are not to be returned to AMS (except in accordance with the terms of the company's guarantee) unless an agreement has been made to that effect with AMS.
- b) Acceptance by AMS of returned goods shall not be deemed to be evidence of any agreement to cancel an order or an admission of any defect in such goods. AMS may make a handling charge equivalent to fifteen percent of the sales value of the goods in respect of any goods so returned.

11. Specification Alteration

AMS reserves the right to make any alteration in the specification or design of any goods and to deliver goods conforming to the altered design or specification in fulfilment of any order provided there is no change in the basic function of the goods so delivered. If AMS decides to alter the specification or design of any goods, it shall be under no obligation to apply such alterations to any goods previously ordered or delivered.

12. Claims for Damage, Loss or Non-Delivery

In case of alleged shortage or damage to the goods, the customer must endorse the carrier's receipt accordingly and submit a written claim to AMS within three days after receipt by the customer. Written notice of non-delivery must be given to AMS within fourteen days after the date of despatch of the goods to the customer as notified in the advice note.

13. Warranty

- a) Warranty periods for goods or services supplied by AMS are as separately advised to the customer at the time of acknowledging his order.
- b) AMS shall have the option to make good or replace without charge, any goods which prove to the reasonable satisfaction of AMS to be faulty within the appropriate warranty period.

PROVIDED that this warranty shall not apply:

- I) to damage caused by the customer's or any third party's act, default or misuse of the goods or by failure to follow any instructions supplied with the goods;
 - II) where the goods have been used in connection with equipment or materials of which the specification has not been approved in writing by AMS;
 - III) to goods which have been altered, modified or repaired in any place other than AMS premises or by persons not expressly nominated or approved in writing by AMS.
- c) The goods should be sent carriage paid to AMS. The benefit of the guarantee following repair or replacement will run for a period equal to the residue of the unexpired guarantee applicable to the goods or service originally supplied. If AMS accepts the guarantee claim, AMS shall as soon as practicable return the goods repaired or replacement goods to the customer carriage paid. If the goods are not eligible for repair or replacement under guarantee, AMS shall notify the customer which shall arrange to collect the goods at its own expense as soon as possible.

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- d) Subject as provided in this condition no warranty, guarantee or condition expressed or implied (by common law, statute or otherwise) as to the quality or fitness for any purpose shall apply to any sale of goods or provision of services by AMS.
- e) Save for liability for death or personal injury arising from AMS's negligence (which if proved is not excluded) AMS's obligation to repair or replace as aforesaid shall constitute the full extent of AMS's liability in respect of any loss or damage sustained by the customer whether caused by any breach of this contract or by misrepresentation or by the negligence of AMS, its employees or agents, or arising from any other cause whatsoever.
- f) AMS shall not be liable for any consequential, economic, direct or indirect loss suffered by the customer arising there from.

14. Sale or Return

- a) Where goods are supplied on sale or return the normal settlement terms (see condition 6) shall apply as regards payment. A credit note for the full price paid by the customer will only be issued if the goods are returned and are found by AMS to be in a satisfactory condition within a period not exceeding eight weeks from the date of delivery. Should the goods be returned in an unsatisfactory condition then a charge will be made for the cost of bringing those goods up to a condition suitable for resale and the amount of the credit shall be adjusted accordingly.
- b) Property in the goods delivered on sale or return shall pass to the customer (provided full payment has been made in accordance with condition 7) either when it signifies its approval or acceptance to AMS or does any other act adopting the transaction or eight weeks from the date of delivery whichever is the sooner.
- c) Risk in the goods delivered on sale or return shall pass to the customer on delivery.

15. Termination of Contract

- a) Without prejudice to any common law or statutory rights which AMS may have, AMS reserves the right to terminate the contract by written notice to the customer (in relation to the whole or any part thereof remaining unfulfilled) forthwith if:
 - I) any payment shall be overdue or the customer does not comply with any other of its obligations to AMS under this contract, or;
 - II) if the customer shall commit any act of bankruptcy or shall suffer any execution or distress to be levied on his goods or (being a company) shall enter into liquidation (whether compulsory or voluntary save for the purpose of and followed by reconstruction or amalgamation) or shall have a receiver appointed or takes or suffers any other action in consequence of debt or;
 - III) the customer fails to accept delivery of the goods in accordance with the terms of the contract.
- b) After the service of the notice of termination by AMS to the customer, all goods in possession of the customer which are the property of AMS shall forthwith be held to the order of AMS and as soon as possible redelivered to AMS at the customer's risk and expense. After the service of the notice the customer shall not submit any goods in its possession which are the property of AMS to any process of manufacture, nor shall it incorporate them nor mix them with other goods nor change their nature in any way whatsoever, nor shall it sell goods which have been so manufactured to a third party nor shall it sell any goods delivered by AMS which are still the property of AMS to a third party. For the purpose of taking possession of the goods which remain the property of AMS a licence to enter upon land, premises, vehicles and vessels of the customer during normal business hours and to remove such goods from the customer's premises is granted by the customer.
- c) Termination shall not affect the continuing enforceability of paragraph (b) above and of condition 16 below.

16. Technical Information and Proprietary Rights

Any know-how, information, design or drawings supplied by AMS relating to the goods or service or to the business or incorporated in the goods of AMS are strictly confidential and the customer shall not copy, use or disclose any such know-how, information, designs or drawings without the prior written consent of AMS. All trade marks, trade names, patent rights, copyright and other similar proprietary rights in respect of the goods shall remain the property of AMS and the customer shall acquire no interest whatsoever in any such rights. The customer will not sell the goods under any other name than the names used by AMS in relation to the goods and will not remove or obliterate from the goods those names or other marks applied to the goods by AMS or by any third party.

17. Export Sales

In the case of orders for delivery outside the United Kingdom the customer shall be liable for all charges, levies, taxes and other costs in respect of the goods as from delivery to the appointed destination within the United Kingdom and in particular shall be liable for all customs, exportation and importation duties chargeable in respect of the goods.

18. Applicable Law

English law shall apply, and the parties agree to the non-exclusive jurisdiction of the English courts for the determination of any question or dispute, howsoever arising.