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1. Interpretation

In these conditions: -

“Buyer” means the person whose order for the Goods is accepted by the Seller.

“Contract” means the contract for the purchase and sale of the Goods governed by these Conditions.

“Goods” means the Goods (including any instalment) which the Seller is to supply in accordance with the Contract.

“Seller” means Alexir Packaging Limited

2. Quotations

(a) Quotations are subject to confirmation by the Seller on receipt of orders.

(b) All prices quoted or accepted are exclusive of any applicable value added tax, which the Buyer shall be liable to pay to the seller.

3. Terms of Payment

(a) The Buyer shall pay the price of the Goods in cash or cleared funds within 30 days of the date of the Seller’s invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

(b) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

i) charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 3% above HSBC’s base rate from time to time until payment in full is made;

ii) treat the Contract as repudiated by the Buyer and claim damages accordingly; and

iii) suspended any further deliveries to the Buyer.

4. Variation

(a) The Contract cannot be cancelled by the Buyer except with the written agreement of the Seller on terms which fully indemnify the Seller.

(b) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

5. Delivery

(a) If the Contract provides for a single bulk delivery without specifying a date the Goods shall be delivered and accepted within 14 days of their being ready.

(b) If the Contract provides for deferred bulk deliveries all the deliveries shall be accepted within 2 months of the specified first delivery or availability date.

(c) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy of the Seller, the Seller may store the Goods at the Buyer’s risk until actual delivery and charge the Buyer for the costs (including insurance) of storage.

(d) Each bulk delivery shall constitute a separate contract and any failure or defect in any one delivery shall not entitle the Buyer to treat the Contract as a whole as repudiated.

(e) Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused.
Time for delivery shall not be of the essence.

6. Quantity Variations

A shortage or surplus of the Goods charged pro rata not exceeding 10% will be deemed to be due performance of the Contract by the Seller. Where delivery is to be by instalments then, for the purposes of this clause, these instalments shall be aggregated.

7. Sketches Etc.

All sketches and original work and printing plates, cutting and creasing dies or tooling shall remain the property of the Seller.

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8. Buyer's Requirements, Printing & Construction

- (a) The Seller reserves the right to increase the price of the Goods for alterations from original copy on and after first proof including alterations in style of construction.
- (b) Proofs of all work may be submitted for the Buyer's approval and no liability will be accepted by the Seller for any errors in proofs passed by the Buyer.
- (c) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- (d) The Buyer shall be solely responsible for any matter which the Seller prints on the Goods on the instructions or at the request of the Buyer, for any design or construction which the Seller executes on the instructions or at the request of the Buyer whether the same shall have been supplied by the Seller or by the Buyer and for any claim or proceedings made or brought by a third party arising therefrom including for infringement of any copyright, design, trade mark or other industrial or intellectual property rights and the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any such claim or proceedings.

9. Claims and Liability

- (a) Complaints or claims based on any defect in the quality or condition of the Goods or their failure to correspond to specification will only be entertained by the Seller if lodged by the Buyer within 7 days of receipt of the Goods or, if related to the transport of the Goods, within such time as will enable the Seller to comply with the time limit and procedure of the relevant carriers. If the Seller is not notified accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- (b) The Seller shall not accept the return of the Goods unless the Seller or its authorised representatives shall first have had the opportunity of examining the same.
- (c) Where any valid claim is made by the Buyer in accordance with this clause the Seller shall be entitled to replace the Goods or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- (d) Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (e) Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

10. Buyer's Property

The Buyer's property when supplied will be held by the Seller at the Buyer's risk. The Seller will take every care to secure the best results where materials are supplied by the Buyer but the Seller shall accept no liability for any defect in the Goods caused directly or indirectly by defects in or unsuitability of materials supplied by the Buyer.

11. Material

Whilst the Seller will make every endeavour to supply material in accordance with the quality of samples submitted or quoted for, the Contract is not a contract of sale by sample.

12. Force Majeure Etc.

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's control including, without prejudice to the generality of the foregoing, any Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, strikes, lockouts, or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), import or export regulations or embargoes, difficulties in obtaining raw materials, labour, fuel, parts or machinery or power failure or breakdown in machinery.

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13. Termination

Without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract 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 arrangement or arrangement to the contrary, if: -

- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- (b) a distress or execution is levied or enforced upon any property of the Buyer and is not paid out or discharged within 14 days; or
- (c) an encumbrancer takes possession or a receiver is appointed of any of the Buyer's undertaking, property or assets; or
- (d) the Buyer ceases, or threatens to cease, to carry on business or to pay its debts as and when they fall due; or
- (e) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

14. Bar Coding

When applying the EAN Symbol or any other code on packaging the Seller undertakes to apply the symbol or code to the relevant specifications and to respect the general requirement for application of the symbol or code but the Seller shall not be liable in respect of the readability of the symbol or code.

15. Risk and Property

- (a) All risk of damage to or loss of the Goods shall pass to the Buyer on delivery.
- (b) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (c) Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee (but without imposing any liability on the Seller to any third party) and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to re-sell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured.
- (d) Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- (e) The Buyer shall not be entitled to pledge or any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

16. Other Conditions of Sale

The Buyer shall, by ordering the Goods from the Seller, be deemed to have accepted that these Conditions shall govern the Contract to the exclusion of any other terms and conditions contained on or in any letter, acceptance form, receipt or the like received by the Seller. No person in the employment of or acting in any way as an agent of the Seller has the authority to vary these Conditions.

17. Governing Law

The construction, validity and performance of the Contract shall be governed by the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

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