

# TERMS and CONDITIONS

## 1 INTERPRETATION

### 1.1 In these Conditions:

'BUYER' means the person whose name appears on the attached written order / printed invoice

'GOODS' means the goods (including any instalment of the goods or any parts for them), which the Seller is to supply and set out on the attached Written Order

'SELLER' means Clive Morley Harps (registered in England and Wales under number 2226753)

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller and attached to these conditions

'CONTRACT' means the contract for the purchase and sale of the Goods.

'WRITING' includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

'WRITTEN ORDER' means the attached written order setting out the agreed price for the Goods.

### 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

## 2 BASIS OF THE SALE

### 2.1 The Seller shall sell and the Buyer shall purchase the Goods subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

### 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the Buyer and the Seller or either party's authorised representatives.

### 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods including but not limited to maintenance and storage of the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed.

### 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

### 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 ORDERS & SPECIFICATIONS

### 3.1 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.

### 3.2 The quantity and description of and any specification for the Goods shall be those set out in the Seller's Written Order.

### 3.3 If the Goods are to have any process applied to them by the Seller in accordance with a specification submitted by the Buyer, 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 claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

### 3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in

Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 3.5 The Seller reserves the right to charge the Buyer a deposit of fifty per cent of the value set out in the Written Order at the date hereof.

## 4 PRICE OF THE GOODS

### 4.1 The price of the Goods shall be the Seller's quoted price set out in the attached Written Order.

### 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

### 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

### 4.4 All prices are in Pounds Sterling.

## 5 TERMS OF PAYMENT

### 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods at any point after the Buyer and Seller have signed these Conditions or 21 days prior to delivery of the Goods which ever is the later.

### 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, 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. Receipts for payment will be issued only upon request.

### 5.3 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:

#### 5.3.1 cancel the Contract or suspend delivery to the Buyer; and

#### 5.3.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per cent per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

### 5.4 Delivery of the Goods shall not be made until the Seller has received cleared funds in full payment.

### 5.4 Title to Goods is retained until payment is made in full.

## 6 DELIVERY

### 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed with the Seller, by the Seller delivering the Goods to that place. A delivery charge shall be levied by the Seller in accordance with the Written Order.

### 6.2 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 however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 6.3 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 (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7 RISK & PROPERTY**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 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.
- 7.3 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, 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, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided 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.
- 7.5 The Buyer shall not be entitled to pledge or in 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8 LIMITATION OF LIABILITY**

- 8.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- 8.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge 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.
- 8.5 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 (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (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, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.6 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 reasonable control.
- 8.7 The Seller shall be under no liability in respect of any damage occasioned to the property of the buyer. Any damage occasioned to other property during the delivery of the goods is the responsibility of the Buyer.

## **9 GENERAL**

- 9.1 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 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 party giving the notice.
- 9.2 No waiver by the Seller 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.
- 9.3 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.
- 9.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 9.5 The Buyer agrees to provide legal parking and to pay any parking penalties or fees incurred during the delivery.

### **Clive Morley Harps Ltd**

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