

UP Global Sourcing UK Limited
TERMS AND CONDITIONS OF SALE 2020 (“Conditions”)

1 Definitions

In these Conditions the following definitions apply:

”Buyer” the person, firm or company by whom an Order for Goods is placed;

”Confidential Information” means any and all information relating to the business of the Seller whether before or after the date of a Contract whether written, oral, visual or on digital media supplied by the Seller to the Buyer either directly or indirectly from information supplied by the Seller, or as a result of visits by the Buyer to the premises of the Seller, including (without limitation) technical information, data, drawings, designs, know-how, specifications, products, new business ideas, business information, marketing information, software programs, pricing details, customer details, supplier details and any other information relating to the business or products of the Seller, its subsidiaries and/or associated companies or any other person (whether corporate or not) with whom the Seller may be in commercial co-operation or association;

”Confirmation of Order” a document confirming that the Seller accepts the Buyer’s order;

”Goods” means the Goods to be supplied by the Seller to the Buyer;

”Restricted Person” means any firm, company or person employed or engaged by the Seller during the term of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement;

”Restricted Supplier” means any firm, company or person who is or has been at any time during the Contract a supplier of goods or services to the Seller;

”Seller” UP Global Sourcing UK Limited, a company registered in England under company number 03357718 whose registered office is at Manor Mill, Victoria Street, Chadderton, Oldham, OL9 0DD;

”Statement of Account” a monthly statement prepared for each Buyer and issued by the Seller’; and

”Working Days” any day of the week excluding Saturday or Sunday and public holidays.

2 Basis of Contract and Entire Agreement

2.1 These Conditions and the New Account Application Form shall govern the sale of any Goods to the Buyer, subject to any variation which may appear on the Confirmation of Order.

2.2 A contract (“Contract”) will be formed when the Seller confirms the Buyer’s order by way of the Confirmation of Order. The Conditions, the New Application Form and the Confirmation of Order constitutes the entire agreement between the parties.

2.3 In the event of any conflict between the Conditions, the New Account Application Form and the Confirmation of Order, the order in which those documents will prevail is as follows:-

- i. Confirmation of Order
- ii. The Conditions
- iii. New Account Application Form

3 Quotations

A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise the same at any time prior to the Seller’s acceptance of the Buyer’s order by the issue to the Buyer of the Seller’s Confirmation of Order.

4 Price of the Goods

The price of the Goods shall be as stated in the Seller’s Confirmation of Order.

5 Terms of Payment

5.1 Payment shall be made in full by the Buyer to the Seller without any deduction or set off in accordance with these Conditions.

5.2 Unless otherwise specified by the Seller, payment terms are 30 days from the date of invoice and the time of payment shall be of the essence ("due date").

5.3 On failure by the Buyer to settle any invoice by the due date (or in accordance with the terms agreed) the Seller may charge the Buyer interest on overdue accounts at the rate of 5% above base rate for the time being of the Bank of England base rate (or, in the case of business to business customers the interest and cost payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998), from the due date thereof until receipt by the Seller of the full amount whether or not after judgment.

5.4 If the Buyer fails to make payment on the due date the Buyer's right to any agreed discount shall be forfeited.

5.5 Where payment for the Goods is made by confirmed/irrevocable letter of credit, the Buyer remains liable to make payment to the Seller by the due date for payment as set out by clause 5 above in the event that either the Bank which issued or the Bank which confirmed the Letter of Credit fails to do so.

6 Credit Notes and Credit Balances

6.1 If the Seller issues a credit note and the Buyer does not utilise the credit note within a period of 12 months from the date of issue, the Seller shall have the right to cancel the credit note and the Buyer shall not be entitled to a replacement or any payment in respect of the same.

6.2 Any credit balance or credit item, for whatever reason, showing on the Statement of Account which remains on the statement for a period of 12 months will be forfeited by the Buyer who shall no longer have any rights to the credit.

7 Delivery Dates

7.1 Delivery dates mentioned in any quotations, acknowledgement of order or elsewhere are given in good faith and the Seller shall use every reasonable endeavour to meet them. However the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates.

7.2 If the Buyer refuses or fails to take delivery of Goods in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods so tendered. If the Buyer, prior to delivery requests a change in the delivery date, the Seller shall be entitled to renegotiate the price and/or cancel the Contract if no new price can be agreed. The Seller shall be entitled to store at the risk of the Buyer any Goods of which the Buyer refuses or fails to take delivery of and the Buyer shall in the addition to the purchase price pay all costs of such storage and any additional losses, costs, charges and expenses incurred as a result of such refusal or failure. The Seller shall be entitled in the case of short-life Goods to immediately dispose of the same in such manner as the Seller may determine and in the case of all other Goods the Seller shall be entitled after the expiration of one month from the date of refusal to take delivery to dispose of the Goods in such manner as the Seller may determine.

7.3 In any event, all deliveries must be taken up by the delivery date stated in the Confirmation of Order. The Seller shall have the right to cancel any undelivered balance not taken up by the date stated on the contract, or any balance which the Seller cannot deliver by reasons of the Buyer's default hereunder, and in either case without prejudice to any claim for the damages the Seller may have.

7.4 The Seller does not sell the Goods on a sale or return basis and there is no obligation on the Seller to accept returned Goods.

8 Retention of Title and Risk

8.1 Title

No title in the Goods shall pass from the Seller to the Buyer unless and until the Seller has received payment in full for the Goods and for any other amounts owing by the Buyer to the Seller on any other account whatsoever.

8.2 Risk

Risk in the Goods will pass to the Buyer from the date of delivery.

8.3 Recovery of the Goods

The Seller reserves the right to repossess and uplift the Goods and thereafter to re-sell the same and for this purpose the Buyer hereby grants an irrevocable right and license to the Seller's employees and agents to enter upon all or any of its vehicles or premises in which the Goods are stored with or without vehicle during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

8.4 Recovery of Proceeds of Sale of the Goods in the Event of Non-Payment

If the Buyer re-sells any Goods supplied by the Seller, the proceeds of such re-sale equivalent to all sums owing ('the Proceeds') shall belong to the Seller until payment has been received in full. The Buyer will hold the proceeds in a fiduciary capacity to be remitted forthwith to the Seller.

8.5 Termination of Buyer's Rights

The Buyer's right to possession shall cease forthwith in the following events:

- (a) the Buyer has not paid all amounts due to the Seller on any account whatsoever;
- (b) the Buyer is declared bankrupt or makes/attempts to make any proposal to his creditors for composition or other voluntary arrangement with its creditors or does or fails to do anything which would entitle a petition for winding up or a bankruptcy order to be presented;
- (c) the Buyer does or fails to do anything which would entitle any person to appoint a receiver to the whole part of the Buyer's assets or would entitle any person to present a petition for the administration of the Buyer or a resolution is passed for the winding up of the Buyer;
- (d) a judgment against the Buyer remains unsatisfied;
- (e) the Buyer is unable to pay a debt to a third party as it falls due and/or is deemed to be insolvent;
- (f) any distress or execution is levied against any of the Buyer's assets;
- (g) or if a Receiver or Administrative Receiver or Administrator of the Buyer's assets or undertaking or any part thereof is appointed or if a notice of intention to appoint an administrator is given; or
- (h) the Buyer ceases to do business.

8.6 Insuring the Goods

The Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risk usually covered by the insurance in the type of business for which the Goods are for the time being used in an amount at least equal to the balance of the price for the same time to time remaining outstanding.

8.7 Mitigation

All mitigation/recovery activities by the Seller under the Contract are agreed to be entirely without prejudice to any additional claims it may have against the Buyer for any failure by the Buyer to complete its obligations under the Contract.

8.8 Deduction, Set-off or Counterclaim

In the event of any of the occurrences referred to in the sub-clause 8.5 above arising, all sums due from the Buyer to the Seller shall become immediately due and payable without deduction, set-off or counterclaim.

9 Notification of Failure of Delivery in Accordance with Contract

9.1 The Buyer shall notify the Seller of any shortage in the quantity actually delivered or any damage to or defect in the Goods. Such notification shall be reported in writing within 3 Working Days of delivery.

9.2 In the event of the Buyer failing to give the Seller such written notice then the Buyer shall be deemed to have accepted the Goods in the quantity and state in which they are actually delivered and the Buyer shall be deemed to have waived any claim in respect of the Goods.

9.3 The Seller may at its option make good any shortage or non-delivery and/or as appropriate replace, repair or provide credit any Goods found to be defective or damaged.

10 Warranties

Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification as at the time of delivery, except as expressly provided under clause 11 below, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11 Liability

11.1 The Seller shall not be liable for defects in the Goods caused by an act of neglect or default of the Buyer or of any third party or for the unsuitability of the Goods or substances.

Except in respect of:

- (a) fraud or fraudulent misrepresentation;
- (b) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (c) defective products under the Consumer Protection Act 1987; or
- (d) death or personal injury caused by the Seller's negligence (or the negligence of its agents or employees),

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 for any consequential losses (including loss of profit) suffered by the Buyer due to any negligence breach of contract misrepresentation or otherwise.

11.2 The Seller's aggregate liability to the Buyer in respect of any occurrence or series of occurrences whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstance exceed the price of the defective damaged or undelivered Goods determined by net price invoiced to the Buyer whether or not loss and damage is limited to the Goods or includes consequential losses.

11.3 Subject to the foregoing and unless specifically otherwise agreed in writing between the Seller and the Buyer, all conditions warranties and representations expressed and implied by statute common law or otherwise in relation to the Goods are hereby excluded to the full extent permitted by law.

12 Interference with Markings

The Buyer shall not alter, obscure, remove, conceal or otherwise interfere with any markings, or other identification of source or origin placed by the Seller on the Goods, or on their labelling or packaging.

13 Intellectual Property

13.1 The Buyer must not use any of the Seller's brand names, business names, designs, logos or trade marks ('Intellectual Property Rights') for advertising or other promotional purposes without the Seller's express prior permission in writing.

13.2 All Intellectual Property Rights not specifically and expressly granted to the Buyer either by these terms and conditions or by express written agreement with the Seller are reserved to the Seller, and the Buyer shall not be party to any act, matter, neglect or conduct whereby those Intellectual Property Rights are prejudicially affected.

14 Non-employment of Employees

14.1 In order to protect the legitimate business interests of the Seller, the Buyer covenants with the Seller that it shall not (and it shall procure that no member of the Seller's associated companies and businesses shall), except with the prior written consent of the Seller, employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

14.2 The Buyer shall be bound by the covenant set out in this clause during the term of the Contract and for a period of 12 months after the date of the latest Confirmation of Order.

14.3 For each and every breach of this clause by the Buyer, the Buyer shall, on demand and on an indemnity basis, pay to the Seller a sum equal to one year's basic salary or the annual fee payable by the Seller to the Restricted Person plus the recruitment costs incurred by the Seller in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interests of the Seller.

15 Non-solicitation of Suppliers

15.1 In order to protect the legitimate business interests of the Seller, the Buyer covenants with the Seller that it shall not (and it shall procure that no member of the Seller's associated companies and businesses shall), except with the prior written consent of the Seller, have any business dealings with, or solicit, entice or attempt to entice away a Restricted Supplier.

15.2 The Buyer shall be bound by the covenant set out in this clause during the term of the Contract and for a period of 12 months after the date of the latest Confirmation of Order.

15.3 For each and every breach of this clause by the Buyer, the Buyer shall, on demand and on an indemnity basis, pay to the Seller the cumulative value of all orders placed by the Buyer with the Restricted Supplier (and all entities associated with the Restricted Supplier) in the 12 month period following the breach. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interests of the Seller.

16 Confidential Information

16.1 Any Confidential Information disclosed under the Contract shall remain the property of the Seller. The Buyer shall have no rights in respect of the Confidential Information other than a licence to use the same in accordance with the terms of the Contract.

16.2 The Buyer undertakes to maintain as confidential all Confidential Information that the Buyer may acquire in any manner and the Buyer will not directly or indirectly use or disclose any of the Confidential Information in whole or in part save as in accordance with the terms of the Contract or with the Seller's written consent. To secure the confidentiality of the Confidential Information, the Buyer shall:

- i. not make copies of the Confidential Information or forward the Confidential Information to any third party without the Seller's prior written consent;
- ii. ensure that proper, adequate and secure storage is provided for the Confidential Information;
- iii. on request of the Seller, deliver up to the Seller all documents and other material in the Buyer's possession, custody or control that bear or incorporate any part of the Confidential Information and will permanently delete all Confidential Information from any computer or other device or media and destroy all documents containing Confidential Information and will confirm compliance of the same in writing; and
- iv. allow access to the Confidential Information exclusively to those of the Buyer's employees who have reasonable need to see and use it and shall inform each of said employees of the confidential nature of the Confidential Information and of the Buyer's obligations under the Contract.

16.3 The requirements noted at clause 16.2 shall not apply if any Confidential Information:

- i. was already in the Buyer's possession before the date of the Contract;
- ii. was developed independently without the use of the Confidential Information;
- iii. is or becomes generally available to the public in publications in general circulation in the United Kingdom through no act or default on the Buyer's part; or
- iv. is required to be disclosed by law.

17 Third Party Rights

If the Buyer uses or sells the Goods in such a manner as to infringe any rights of a third party the Seller shall not be responsible for such infringement nor for any alleged infringement arising from the Buyer's action in relation to the Goods and the Buyer hereby agrees to indemnify the Seller from and against all liability arising therefrom.

The Buyer shall not make any representations, warranties or guarantees with reference to Goods except such as are consistent with these terms and conditions and entirely on its own behalf and not on behalf of the Seller.

18 Force Majeure

If the supply of Goods by the Seller is prevented, hindered, delayed or rendered un-economical by reason of circumstances or events beyond the Seller's reasonable control including but not limited to an act of God, restrictions, lockdown, restraint or interference by any Government or Governmental or official body or any legislation rules order they make, pandemic, epidemic riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, severe weather conditions, difficulty or increased expense in obtaining labour, materials or transport, or other circumstances affecting the supply or the manufacture of the Goods or the means of delivery, the Seller shall be under no liability to the Buyer and shall have the right to cancel or suspend the whole or any part of the Seller's unfulfilled obligations and in the event of any such cancellation or suspension to treat the terms or this Contract as having been modified accordingly by mutual consent.

19 Assignment

This contract is between the Seller and the Buyer as principals and is not capable of assignment by the Buyer except with the written consent of the Seller.

20 Amended Terms and Conditions

Any amendments to the terms and conditions of the sale of the Goods shall be of no effect unless agreed in writing by the Seller.

21 Waiver

Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right not operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No exercise of any right or remedy under these terms and conditions or at law in equity shall (save to the extent, if any, provide expressly under these terms and conditions) operate so as to hinder or prevent the exercise of any other right or remedy howsoever at law or in equity.

22 Third Party Rights

A person who is not party to the Contract shall not have any rights under or in connection with it under the Contracts (Rights of Third Parties) Act 1999.

23 Severance of Conditions

If any of these Conditions or any portion of the same shall be held to be invalid or unenforceable in whole or in part under any enactment or rule of law such Conditions or portion of same shall to that extent only be deemed not to form part of these Conditions and the validity and enforceability of all the remaining Conditions shall be affected.

24 Law and Arbitration

The Contract shall be governed and construed in accordance with the laws of England and Wales and any dispute hereunder shall be submitted to amicable negotiation or alternative dispute resolution or failing resolution of same then by arbitration by the Tribunal of Arbitration of the Manchester Chamber of Commerce by reference to a single arbitrator agreed upon between parties or failing agreement upon application of either to be appointed pursuant to the rules of the London Court of International Arbitration and as provided by the Arbitration Act 1996 or any statutory modification or re-enactment thereof from time to time in force and in such event the award of the arbitrator against the Buyer for non-payment of the price or any part thereof the Goods may, at the option of the Seller, be pursued in the appropriate Courts of the jurisdiction where the Buyer is resident.