

## Twintex Terms of Sale

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

“Group” the Buyer and any Subsidiary.

“Subsidiary” means a subsidiary or participating company of the Group Buyer;

“Buyer” means the person, firm or company who purchases the Goods from the Company

“Company” means the person or firm who sells the goods to the Buyer.

“Contract” means any contract between the Company and the Buyer for the sale and purchase of the Goods. Any such contract shall be deemed to incorporate these conditions.”

“Delivery Point” means the place where delivery of the Goods is to take place under condition 4.

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

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 The Company has the right to refuse any order if the necessary credit insurance is not got.

### 3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company'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 this is not a sale by sample.

### 4. DELIVERY

4.1 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.2 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.3 Any discrepancy in either quantity or quality of any item(s) in each delivery must be notified in writing by fax or by email read receipt to the Company within 15 days following receipt of the Goods by the Buyer.

### 5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company'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. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

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

6.3.1 Hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.3 Maintain the Goods in satisfactory condition and keep them insured for their full price against all risks. In case of sinister part or all indemnity paid for insurance company, according to debit value, will be delivered to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly;

6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.4.3 the Buyer shall hold that part of the proceeds of sale which is equal to the amount owed by the Buyer to the Company on trust for the Company.

6.4.4 the Buyer must not assign to any other person any rights arising from a sale of the Goods without the Company's written consent, and the Company may by written demand require the Buyer to assign to the Company the rights to recover the price of the Goods from the purchaser of the Goods.

6.5 Where the provisions of conditions 6.4.3 or 6.4.4 are held by a court to create a charge and such charge is void for a failure to register it, the parties agree that conditions 6.4.3 and/or 6.4.4 shall be deemed severed from this agreement and the remaining provisions of condition 6.4 and this agreement shall continue in full force and effect. The Buyer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, 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), or a resolution is passed or a petition presented to any court 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

6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts or the Buyer ceases to trade; or

6.5.3 The Buyer encumbers or in any way charges any of the Goods.

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

6.7 Until ownership of the Goods has passed to the Buyer, the Company may, at any time, require the Buyer to deliver the Goods to the Company and, if it fails to do so, enter the premises where the Goods are situated to repossess the Goods.

6.8 Should the Buyer's right to possession of the Goods cease under clause 6.4 or 6.6 then notwithstanding the incorporation of any brands, logos or trade marks ("Intellectual Property") in the Goods and the ownership of such Intellectual Property by the Buyer (or its licensors):

6.8.1 the Company shall be entitled to sell the Goods without first having to remove the Intellectual Property from the Goods;

6.8.2 the Buyer automatically grants the Company a licence in respect of such Intellectual Property sufficient to enable the Company to sell such Goods;

6.8.3 and the proceeds of sale shall belong to the Company absolutely and the Buyer shall have no right or interest in those proceeds. If the net proceeds received by the Company are less than the amount owed by the Buyer to the Company in respect of the Products, it may recover the balance from the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## **7. PRICE**

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be always the price set out by mutual agreement of the parts.

## **8. PAYMENT**

8.1 The payment of the price for the Goods is due in the currency referred in the invoice, in which will be mentioned the payment conditions as well.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately if the Buyer fails in any way in one or more parallel contracts or agreements.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate legally defined accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the applicable legal provisions.

8.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer agrees that the Company shall have the right to delay, suspend or cancel any or all production on behalf of the Buyer and the Buyer agrees that it shall, without exception, subsequently accept late delivery on a date to be decided by the Company and shall pay to the Company the full price for such delayed or suspended goods where the delay is caused by such aforementioned failure of the Buyer to pay any sum due to the Company.

## **9. ASSIGNMENT**

9.1 The Company may assign the Contract or any part of it to any person, firm or company.

9.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **10. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **11. GENERAL**

11.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

11.2 If any 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.

11.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

11.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract

11.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

## **12. COMMUNICATIONS**

12.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post, sent by fax or email

12.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company;

12.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

12.2 Communications shall be deemed to have been received:

12.2.1 if sent by pre-paid first class post, seven days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

12.2.2 if delivered by hand, on the day of delivery;

12.2.3 if sent by fax or e-mail on a working day prior to 6.00 pm, at the duly proved time of transmission and otherwise on the next working day.

12.3 Communications addressed to the Company shall be marked for the attention of Bruno Mineiro or Mico Mineiro

## **13. COMMENCEMENT DATE**

13.1 This agreement shall begin and be in effect from the date of receipt by the Company of any order from the Buyer.

## **14. LAW AND JURISDICTION**

Portuguese law is applicable to any contract made under these terms.