



## TERMS OF SALE

### **1. Basis of this Contract**

- 1.1 In these terms the Company means one of companies in the CLAYTAN GROUP and the Buyer means any person placing an order with the Company for the purchase of goods or provision of services. Except where the context otherwise requires, in relation to the provision of services, reference to 'Goods' shall also be construed as reference to services.
- 1.2 A contract under which the company shall sell Goods to the Buyer shall only come into existence once the company has received and accepted the Buyer's order and until acceptance the Company shall be under no obligation to the Buyer
- 1.3 The contract comprised by these terms shall be the entire contract between the Company and the Buyer ('the Contract') Any other terms, conditions or provision whether proposed by the Buyer orally or in writing shall be of no effect and the sale of Goods by the Company to the Buyer shall not constitute acceptance of such terms, conditions or provisions. The terms of this contract shall override and supersede any previous negotiations, agreement or arrangement between the Company and Buyer in relation to the supply of Goods
- 1.4 Unless specifically agreed in writing and signed by a director of the Company information any advised given orally or contained in the Company's publicity material, advertisements and catalogues and in correspondence between the company and the Buyer before the date of this Contract is given gratuitously and without responsibility on the part of the Company and shall not for part of this Contract.
- 1.5 Unless stated in this Contract or expressly agreed in writing and signed by a director of the Company, no term, condition warranty or representation ( whether expressed or implied by statute, law, custom or usage ) as to the nature, quality or fitness of the Goods or their conformity with any description or sample is given by the Company.

### **2. Prices**

- 2.1 The Company may alter its quoted prices without notice both before and after acceptance of the Buyer's order and all goods will be charged for at prices rulling at the time of delivery.
- 2.2 Prices quoted do not include sales tax or other duties or taxes

### **3. Delivery**

- 3.1 Dates and time given for delivery of goods are given as estimates only and shall not constitute a term or condition of any contract between the Company and the Buyer. Time shall not be of essence. Whilst the Company will use all reasonable endeavours to meet a time estimate, it reserves the right to amend any estimate without notification
- 3.2 The company will deliver the goods in such batched or instalments as it considers expedient. Failure by the Company to deliver one or more batch or instalment shall not entitle the Buyer to claim compensation or reject those or subsequent deliveries
- 3.3 The method of delivery will be as quoted by the Company but if this is not stated then the Goods shall be delivered in accordance with sub-paragraph 3.3b
  - a) If the Buyer agrees to collect or arranges collection of the Goods from any of the Company's premises ('the Premises') delivery shall be effected and risk but not title shall pass when Goods are handed to the Buyer or its carrier at the Premises and Buyer shall collect the Goods within 10 working days such notice.
  - b) If the Company agrees to deliver the goods to a place in Malaysia or Outside Malaysia nominated by the Buyer, the Company shall engage for this purpose and shall where required indicate to the Buyer expected dates and times of dispatch and delivery. The Company does not represent that the expected date or time of delivery will be met. Delivery shall be effected and risk but not title shall pass when delivery is tendered at the nominated place ducing normal working hours.
  - c) The Buyer shall promptly notify the Company if Goods to be delivered in accordance with sub-paragraph(b) do not arrive within seven working days of the expected delivery date.
  - d) The Buyer shall carefully examine Goods delivered in accordance with sub-paragraph (b) on receipt immediately advise the carrier and notify the Company within seven working days confirming in writing, details of any short delivery or defects reasonably discoverable on careful examination
  - e) The Company Shall endeavour to replace, or at its option, refund the purchase price of any defective or undelivered goods falling into sub-paragraph (c) or (d), but shall not be under any liability to the Buyer in this respect if the Company dos not receive the notices referred to in sub-paragraph ( c ) or ( d ), it shall be discharged from all liability ( whether arising in negligence or otherwise ) arising from such non delivery, short delivery or defects.

### **4. Property and Risk**

- 4.1 The Goods shall remain the property and in the absolute ownership of the Company until the Buyer has paid in full all amounts owned by the Buyer to the Company in respect of the Goods on any account under any transaction. Until such payments is made the Buyer holds the Goods as the Company's fiduciary agent and bailer and the Company may at any time request the return of any Goods which have not been paid for and which are in the possession or control of the Buyer
- 4.2 The risk in the Goods will pass to the buyer in accordance with paragraph 3 of this Contract irrespective of property in the Goods remaining with the Company.
- 4.3 The Buyer shall keep the Goods in good merchantable condition and fully insure them
- 4.4 The Buyer shall immediately notify the Company if it or its directors intend to present a petition for the making of an administrative order or if it is aware of such intention on part of any of its creditors.

- 4.5 The Buyer's authority to possess or sell the Goods shall forthwith terminate upon the occurrence of any event referred to in sub-paragraph 6.1 (a) or (b).
- 4.6 The Company may repossess the Goods in accordance with sub-paragraph 4.5 and for this purpose the Buyer grants to the Company an irrevocable license to enter the Buyer's premise or any other premises in the occupation or control of the Buyer where the Goods are, or are believed by the Buyer to be located and remove the Goods. Even before the authority referred to in that paragraph has terminated, representatives of the Company may at any time enter such premises to inspect the Goods

## 5. Limitation of Liability

- 5.1 In the event that the Company's products causes any direct damage to any property of a Customer, the Company's liability for such loss or damage, after the loss has been properly proved or been mutually agreed upon, shall in all circumstances be limited to the value of the specific individual defective item/product originally supplied or sold by the Company to the Customer only.
- 5.2 The agreed limitation as provided in clause 5.1 above shall be applicable at all times and is irrespective of the number of claims made when so ever and how so ever.
- 5.3 In addition to the provision herein and not in derogation of clause 5.1 above, the Company shall not be liable in any manner whatsoever to the Customer for any other losses, claims, expenses or damages of whatsoever nature ) including loss of profits for the entire project and/or any other related projects, third party claims or any alleged consequential claims/losses of whatsoever nature by whosoever parties)as a result of its sale and supply ( or omission to supply ) of any products to the Customer.

## 6. Termination of this Contract.

- 6.1 The company shall have the right to terminate this contract without affecting its accrued rights by giving notice to the buyer if
- a) The buyer defaults in the payment on its due date of any sum under or pursuant to any transaction under this Contract or commits any continuing or serious breach of this Contract and fails to remedy such breach ( if remediable ) within ten working days of the Company's notice to do so, or
  - b) Any of the following events occurs
    - i - distress or execution is levied against any of the Buyer's assets and is not paid or discharged within seven days or a judgement against the buyer remains unsatisfied for more than seven days, or a receiver is appointed with respect of any of the Buyer's assets or
    - ii - a petition is presented for the winding up of or an administration order to be made in relation to the Buyer, or a resolution passed for the Buyer's winding up ( other than a member's voluntary winding up for the purposes of amalgamation or reconstruction) on terms approved in writing by the Company of
    - iii- the Buyer suspends or threatens to suspend payment of its debts or is deemed unable to pay its debts for the purpose of the Bankruptcy Act, or cease or threatens to cease to carry on its business or any material parts as a going concern, or as
    - iv- at any time the Company has reasonable grounds to believe any of the events mentioned in (a) or (b) above is likely to happen within a period of three month thereafter.
- 6.2 On termination of this contract for any reason
- a) the Company shall be discharged from any further liability to perform under the Contract
  - b) the Buyer shall pay the Company on demand for all work performed the Company for the Buyer prior to termination, and
  - c) the Company is granted an irrevocable license to enter the Buyer's premises to recover any Goods or other material which are the Company's property

## 7. General

- 7.1 The Contract shall in all respects be governed by Malaysian Law
- 7.2 The construction of this Contract is not to be affected by any heading. Any variation to this Contract shall only be binding if it is recorded in a document signed by a director of the company.
- 7.3 Notices shall be given to a party by being sent to the party's address by facsimile, telex, or registered post and by airmail where appropriate. Each party shall promptly notify the other in writing any change of address or of telex or facsimile number.
- 7.4 The Company shall not be liable in any way for any failure to perform its obligations or for loss, damage or delay incurred by the Buyer resulting from circumstances beyond the Company's reasonable control.
- 7.5 It is the Buyer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by government or other corporation relating to the possession, use, import, export, or resale of the Goods.
- 7.6 Failure by the Company to exercise any of its rights shall no not be a waiver or forfeiture of such right