

TERMS AND CONDITIONS OF SALE OF GOODS

1. DEFINITIONS & INTERPRETATION

- 1.1 In these terms and conditions, the following words and phrases shall have the meanings ascribed to them below:
- "Acknowledgement of Order"** means the document issued by ARC to the Customer, confirming details of the Contract;
- "ARC"** means ARC International Tableware UK Ltd, (company no. 01567500) whose registered office is Terrace Road, Pinvin, Nr Pershore, Worcestershire, England, WR10 2DJ.
- "Contract"** means the contract between ARC and the Customer for the sale and purchase of the Goods, incorporating these terms and conditions;
- "Credit Account Application"** means an application form for the Credit Facility, the completion of which will help determine whether or not the Credit Facility will be granted;
- "Credit Facility"** means the facility granted by ARC to the Customer, as evidenced by written confirmation to the Customer of such an offer and any special terms;
- "Customer"** means the company, person or party detailed in the Acknowledgement of Order or Order Form;
- "Goods"** means the goods detailed in the Acknowledgement of Order or Order Form;
- "Order Form"** means the document confirming details of the Contract;
- "Price"** means the price payable for the Goods, detailed in the Acknowledgement of Order or Order Form;
- "Sales Literature"** means all brochures, drawings, descriptive matter, specifications and websites used by ARC to advertise and promote the Goods;
- 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 terms and conditions.

2. CONTRACT FORMATION

- 2.1 Acceptance of the Customers order and the completion of the Contract between ARC and Customer shall take place upon one of the following happening of: (i) delivery of the Goods; or (ii) ARC inputting the Customers order on its system; or (iii) ARC issuing an Acknowledgement of Order to the Customer, whichever occurs first

3. ENTIRE AGREEMENT AND SCOPE

- 3.1 Subject to any variation under condition 3.3 the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, communication, specification or other document).
- 3.2 No terms or conditions endorsed on, delivered with or contained in the Customer'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.
- 3.3 All Sales Literature is 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 which is not a sale by sample.
- 3.4 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised agent of ARC.
- 3.5 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ARC that is not set out in the Contract.

4. PRICE AND STANDARD PAYMENT TERMS

- 4.1 The price payable for the Goods shall be the Price.
- 4.2 Every effort is made by ARC to ensure that the Price and the prices shown in the Sales Literature are accurate. Notwithstanding that the Contract has been formed, ARC shall have the right to terminate the Contract where the Goods have been sold at the incorrect Price. ARC will always give the Customer the option of reconfirming the Contract at the correct Price.
- 4.3 Unless expressly stated otherwise, the Price shall exclude value added tax (where applicable) at the applicable current rate and delivery charges, which shall be payable in addition to the Price.
- 4.4 Unless condition 5 below applies, ARC shall not deliver the Goods until ARC has received in full (in cash or cleared funds) all sums due to it in respect of the Contract.

5. CREDIT FACILITY AND EXTENDED PAYMENT TERMS

- 5.1 This condition 5 shall apply to the Contract if the Customer has the benefit of a Credit Facility.
- 5.2 ARC shall issue an invoice for payment of the Price, the day after the Goods are delivered.
- 5.3 The Customer shall pay the invoice within thirty (30) days of the date of invoice. Time for payment of the Price shall be of the essence.
- 5.4 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by ARC to the Customer.
- 5.5 If the Customer fails to pay ARC pursuant to this condition 5, the Customer shall be liable to pay ARC's reasonable costs for recovery of the Price (including without limitation legal and court costs) together with interest on the Price from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Bank of England accruing on a daily basis until payment is made, whether before or after any judgment.

6. RISK & RETENTION OF TITLE

- 6.1 The Goods are at the risk of ARC, until delivery, whereupon risk shall transfer in full to the Customer.
- 6.2 Full legal and beneficial title and ownership of the Goods shall pass to the Customer once ARC has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Contract; and
- 6.2.2 all other sums which are or which become due to ARC from the Customer under any other contract or account.
- 6.3 Until title and ownership of the Goods has passed to the Customer, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as ARC's bailee;
- 6.3.2 store the Goods (at no cost to ARC) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the property of ARC;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on ARC's behalf for their full Price against all risks to the reasonable satisfaction of ARC. On request the Customer shall produce the policy of insurance to ARC.
- 6.4 The Customer's right to possession of the Goods shall terminate immediately if title and ownership of the Goods has not already passed in accordance with condition 6.2 and:
- 6.4.1 the Customer 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 of the Customer; or
- 6.4.2 the Customer 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 any contract between ARC and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 6.4.3 the Customer encumbers or in any way charges any of the Goods.
- 6.5 ARC shall be entitled to recover payment for the Goods notwithstanding that legal and beneficial ownership and title of any of the Goods has not passed from ARC.
- 6.6 The Customer grants ARC, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

7. DELIVERY

- 7.1 Unless otherwise agreed in writing, delivery of the Goods shall be made to the address specified in the Acknowledgement of Order or Order Form.

- 7.2 Any dates specified by ARC for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 7.3 If delivery is made at the premises of ARC (ex works), the Customer shall take delivery of the Goods within two (2) days of ARC giving it notice that the Goods are ready for delivery.
- 7.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or ARC is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 7.4.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by ARC's negligence);
- 7.4.2 the Goods shall be deemed to have been delivered; and
- 7.4.3 ARC may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 7.5 If ARC is requested to re-deliver the Goods following a failed delivery in accordance with condition 7.4, ARC reserves the right to make an additional charge for such re-delivery.
- 7.6 ARC may deliver the Goods by separate instalments. Each separate instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 7.7 The Customer shall be required to notify ARC in writing of non-delivery, any delivery shortages or damage to any part of the consignment within three (3) days of delivery.
- 8. QUALITY**
- 8.1 ARC warrants that the Goods shall on delivery be of satisfactory quality and reasonably fit for their intended purpose within the meaning of the Sale of Goods Act 1979, for a limited period of three (3) months from the date of delivery.
- 8.2 ARC shall not be liable for a breach of any of the warranty in condition 8.1 unless:
- 8.2.1 the Customer gives ARC written notice of the breach within three (3) days of the date of: (i) delivery of the Goods if the breach was obvious; or (ii) the date which it ought reasonably to have discovered the breach, if was not obvious; and
- 8.2.2 ARC is given a reasonable opportunity after receiving such notice to examine the Goods, in which case the Customer (if asked to do so by ARC) shall return such Goods to ARC's place of business (at ARC's cost) for the examination to take place there.
- 8.3 ARC shall not be liable for a breach of any of the warranty in condition 8.1 if:
- 8.3.1 the Customer makes any further use of the Goods after giving such notice; or
- 8.3.2 the defect arises because of reasonable wear and tear, the Customer failed to follow ARC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 8.3.3 the Customer alters or repairs the Goods without the written consent of ARC.
- 8.3.4 or where the customer disposes of the goods without prior inspection by Arc
- 8.4 Subject to conditions 8.2 and 8.3, if any of the Goods do not conform with the warranty in condition 8.1, ARC shall at its option repair or replace such Goods (or the defective part) or refund the Price of such Goods at the pro rata Contract rate provided that, if ARC so requests, the Customer shall, at ARC's expense, return the Goods or the part of such Goods which is defective to ARC.
- 8.5 If ARC complies with condition 8.4 it shall have no further liability for a breach of any of the warranty under condition 8.1.
- 8.6 Any Goods replaced by ARC pursuant to this under conditions of 8.1
- 9. LIMITATION OF LIABILITY**
- 9.1 The following provisions set out the entire financial liability of ARC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of these terms and conditions;
- 9.1.2 any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods;
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 Nothing in these conditions excludes or limits the liability of ARC:
- 9.2.1 for death or personal injury caused by ARC's negligence;
- 9.2.2 under section 2(3), Consumer Protection Act 1987;
- 9.2.3 for any matter which it would be illegal for ARC to exclude or attempt to exclude its liability;
- 11.2.4 for fraud or fraudulent misrepresentation.
- 9.3 Subject to condition 9.2 and condition 9.3:
- 9.3.1 ARC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum of money equal to 110% of the Price;
- 9.3.2 ARC shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses.
- 9.4 The parties agree that the limitation of liability in this condition 9 is reasonable in all the circumstances, taking account of the availability of extra insurance to cover any other reasonably foreseeable liabilities.
- 9.5 Except as otherwise provided for under these terms and conditions, all other warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by premise law, excluded from the Contract.
- 10. UNFORSEEABLE DELAYS**
- 10.1 ARC reserves the right to defer the performance of the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of ARC 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.
- 11. GENERAL**
- 11.1 No Goods are delivered on sale or return unless specifically agreed in writing by ARC
- 11.2 ARC may assign the Contract or any part of it to any third party. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of ARC.
- 11.3 Each right or remedy of ARC under the Contract is without prejudice to any other right or remedy of ARC whether under the Contract or not.
- 11.4 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.
- 11.5 Failure or delay by ARC 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.
- 11.6 Any waiver by ARC of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 11.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.