

# Cu Plas Callow (IOM) Ltd Sales Terms (Goods and Services) 01 May 2017

1. **Definitions and Interpretations**
- 1.1 In these terms "we" means Cu Plas Callow (IOM) Ltd, "you" means the person, firm or company who purchases the goods and/or services from us; and "our" and "your" shall be construed accordingly and "contract" means any order which has been accepted by us.
- 1.2 References to any statutory provision shall include (i) any subordinate legislation made under it (ii) any provision which it has modified or re-enacted and (iii) any provision which subsequently supersedes or re-enacts it.
2. **Application of Terms**
- 2.1 These terms apply to all sales of goods and/or services by us to all exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by our Managing Director(s).
- 2.2 Each order or acceptance of a quotation for goods and/or services by you shall be deemed to be an offer by you to buy goods and/or services subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted until we begin to process your order or until written confirmation of order is issued.
- 2.3 You acknowledge that you have not relied on any statement or representation made or given on our behalf. Any estimate of quantities needed, advice as to the suitability of any goods for a purpose, and any plan or measurement given by us is given for guidance only (based on your information) and without liability on our part. No allowance is made by us for additional materials, wastage or installation. You must satisfy yourself that all goods and/or services ordered are correct.
- 2.4 Any typographical error or clerical omission in any sales literature, quotation, price list or order document shall only be corrected without liability on our part.
3. **Description of Goods**
- 3.1 The quantity and description of the goods are set out in our quotation or confirmation of order. We may supply goods in either metric or imperial in the nearest equivalent measure and goods may be charged in metric allowing for conversion.
- 3.2 All samples, drawings, descriptive matters, specifications and advertising are issued or published for the sole purpose of giving an approximate idea of the described goods. They shall not form part of the contract and this is not a sale by sample. Each order shall be considered a separate order and we are unable to guarantee that further orders for the same goods will match the previous order. Where fine or special tolerances are required in the goods supplied beyond those generally accepted in our trades, no liability shall attach to us unless such tolerances are notified in writing that we are prepared to accept such order.
4. **Delivery of Goods**
- 4.1 Unless otherwise agreed by us, delivery of the goods shall take place at our place of business. Delivery shall occur when you take possession of the goods at our premises (or where we agree to deliver) when goods are ready for unloading at the delivery address. Any dates and times we specify for the delivery of the goods are an estimate. We shall not be liable to you if we do not deliver on or at any date or time. Time for delivery shall not be made of the essence by notice. If you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver goods because you have not provided appropriate instructions, our documents or you shall be entitled to immediate full payment and risk in the goods shall pass to you. We may store such goods until delivery and you shall be liable for all related costs and expenses arising from such non-delivery including transport and storage costs. If you fail to accept delivery of the goods within 4 months of the date the contract commenced, we may sell or dispose of these goods (whether, or not you have paid for them). Storage or disposal costs shall be recoverable from you. Any net proceeds of any sale shall be held on trust for you.
- 4.2 We will deliver to site provided, that there is suitable road to the point where delivery is requested. If no such road exists, delivery will be made to the nearest point at which, in the driver's opinion, the vehicle can safely and lawfully unload. Except where we use a vehicle mounted crane/fork truck, you shall be responsible for safely and lawfully unloading the goods and shall provide all necessary labour and equipment. We may charge you an additional fee if you delay in taking delivery of the goods when tendered. If any goods, packaging or container has been delivered and deposited, whether on the public highway or elsewhere, you shall be responsible for all steps that need to be taken for the protection of person or property in relation to such goods, packaging or containers and shall indemnify us in respect of all or any costs, claims, losses or expenses which we may incur because of such delivery.
- 4.3 We shall not be liable for any shortages in quantity delivered unless you give written notice to us of such shortages within three working days of delivery. In any event our liability shall be limited to making goods the shortfall or (at our option) issuing a credit note or refund at the pro rata contract rate against any invoice raised for such goods.
- 4.4 We may deliver the goods by separate instalments. Each instalment shall be a separate contract and cancellation or termination of one instalment shall not entitle you to cancel any other instalment.
- 4.5 Any query about delivery shall be made as soon as possible and in any event within twenty days of the date when the goods would in the ordinary course of events have been delivered else the goods shall be deemed to have been delivered in accordance with the contract.
- 4.6 We shall not be responsible for taking back any nonchargeable packaging/pallets. The cost of any testing of the goods that we deem is necessary whether, or not in your presence, will be charged to you, unless prior written agreement has been obtained from us.
5. **Risk and Ownership of Goods**
- 5.1 The goods are at your risk from the time of delivery or deemed delivery.
- 5.2 Ownership of the goods shall not pass to you until we have received payment in full (in cleared funds) all sums due to us in respect of the goods and all other sums which are or become due to us from you on any account or (if later) the time of delivery.
- 5.3 Until ownership has passed to you, you shall hold the goods on a fiduciary basis as our bailee and store the goods (at no cost to us) in satisfactory condition and in such a way that they remain readily identifiable as our property and you shall tell us immediately where the goods are situated.
- 5.4 Subject to (below) you may resell the goods before ownership has passed to you provided, that any sale shall be effected in the ordinary course of your business at full market value and you shall deal as principal; you shall hold all proceeds of sale on trust for us and assign to us all rights and claims which you may have against your customer arising from such sales until full payment is made.
- 5.5 You right to possession of, and authority to sell the goods shall terminate immediately (and you shall immediately deliver the goods to us of your cost and risk) if we notify you to such effect or on the happening of any event set out in 10.2 (a) - (f) (whichever is earlier) and you shall immediately notify us in writing upon the happening of any such event.
- 5.6 You grant to us possession of an irrevocable licence at any time to enter any premises (with and without vehicles) where the goods are or may be stored to inspect them or, where your right to possession has terminated, to recover them.
- 5.7 We are unable to determine whether any goods are the goods in respect of which your right to possession has terminated, you shall be deemed to have sold all goods of the kind sold by us to you in the order which they were invoiced to you.
6. **Provision of Services**
- 6.1 For any services provided by us you shall allow us safe and reasonable access to the site within our normal working hours to carry out the service.
- 6.2 The price quote for the service assumes that: (a) The site is ready and suitable for the service to commence at the agreed time; (b) The services are to be carried out within our normal working hours; (c) Suitable access is available when the service is to take place; (d) If any of these assumptions proves incorrect, we shall be entitled to vary the price.
- 6.3 You shall provide a safe environment and all necessary consents, information, and resources for us.
- 6.4 Any dates and times we specify for our services are an estimate. We shall not be liable if we do not carry out the services on or at any date and time. Time for performance shall not be made of the essence by notice.
- 6.5 All copyright and other intellectual property rights created, developed and used shall remain the sole property of us or our licensors.
7. **Prices and Additional Charges**
- 7.1 Unless we otherwise agree in writing, the price payable for the goods and/or services shall be the price applicable on the date of delivery or deemed delivery for goods and the date the services are carried out.
- 7.2 The price for goods and/or services shall be exclusive of any Value-Added Tax, which shall be payable by you at the rate applicable at the tax point.
- 7.3 We may at any time after acceptance of an order, but prior to delivery, revise the price payable for the goods and/or services to take account of increases in costs, including, without limitation, costs of any goods or materials, carriage, overheads, the increase or imposition of any tax duty or other levy and variation in exchange rate.
- 7.4 Unless we otherwise agree in writing, we may charge the cost of delivering the goods to you.
- 7.5 We may charge for any special packaging to cover the cost of labour and materials. We will charge for pallets, crates and cases but these items will be credited in full if such items are returned to us carriage paid and in good condition within seven days of delivery. Where we agree to collect such pallets, crates and cases, you shall make such items available for collection on request.
8. **Payments and Interest**
- 8.1 Payments for goods and/or services supplied on a credit account shall be due not later than the last day of the month following the month of invoice tax date. If you default in making payment, the entire balance of your account shall be payable immediately and we may charge interest, together with costs and expenses, in accordance with following point)
- 8.2 For non-credit account purchases, payment shall be by cash on delivery or at Directors discretion on delivery or deemed delivery.
- 8.3 Time for payments shall be of the essence. You shall make all payments in Sterling (£ GBP) and in full without any deduction.
- 8.4 If you fail to pay us any sum due (and whether or not any part of your account is subject to query), we may in addition to our rights under Debt Recovery and Enforcement Act 2012 appropriate any payment made by you to such of the goods and/or services (or such goods and services supplied under any other contract between you and us) as we may think fit: and you shall be liable to pay us interest on such sum at the annual rate of 6% above the base lending rate from time to time of the Royal Bank of England Plc, accruing on a daily basis, or at our option, interest in accordance with the Late Payments Act from the due date for payment until payment is made in full, whether before or after any judgment, together with all costs and expenses incurred by us in recovering sums due or exercising our rights under the provision, including our debt recovery fees at the rate of our chosen debt recovery agent.
- 8.5 Credit accounts may only be opened at our discretion and are subject to either satisfactory references or trading history on a cash basis with us. We may set a maximum amount of credit allowable upon each account and withdraw credit facilities without explanation. You agree that we may obtain, retain and provide financial standing. Any change in the constitution of your organization must be notified in writing to our Accounts Department prior to it occurring in order that credit facilities to the reconstituted organization may be put in place, subject always to our discretion and our confirmation in writing. Until credit facilities are agreed, the existing entity and new entity shall be jointly and severally liable for any debt due to us.
9. **Liability**
- 9.1 If any goods or services are defective due to defective workmanship or material, we shall (at our option) replace such goods or refund the price of such goods or services at the pro rata contract rate provided, that: (a) You give us written notice of the defect within seven days of the date of delivery, in the case of a defect which is not discoverable upon reasonable examination, within seven days of the time when you discover or ought to have discovered the defect (and in any event within the date of invoice); (b) We are given a reasonable opportunity after receiving notice to examine such goods (in situ) and (if asked to do so by us) you return such goods to our place of business for examination to take place there; (c) You do not make any further use of such goods are giving such notice; (d) The defect is not due to wilful damage, negligence (other than ours), fair wear and tear, alteration or repair of such goods without our prior written consent or incorrect storage, application, movement, installation, commissioning, use or maintenance of the goods; and (e) The defect is not due to any act or omission of you, your agents or contractors.
- 9.2 Our entire liability for defective goods is set out above and we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods.
- 9.3 On request, we will provide information about any manufacturer's guarantee offered and available to you in respect of the goods but we are not legally responsible for any obligation under manufacturer's guarantees. Where the goods contain a warranty or guarantee offered by us please refer to the special conditions applicable on our website or available upon request.
- 9.4 Save as expressly set out in these terms, all warranties and other terms implied by statute or common law (save for the term implied to as title) are, to the fullest extent permitted by law, excluded from the contract.
- 9.5 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising about the performance or contemplated performance of the contract shall be limited to the contract price.
- 9.6 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused.
- 9.7 Nothing in these terms excludes or limits our liability for (a) death or personal injury caused by our negligence, (b) fraud or fraudulent misrepresentation; and (c) any other matter which it would be illegal for us to exclude.
- 9.8 Where goods are manufactured in compliance with any design specifications or drawings supplied by you or your customer, you shall indemnify us against all proceedings costs, claims, losses or demands in respect of any infringement of any intellectual property rights whatsoever of third parties in any part of the world.
10. **Cancellations and Returns**
- 10.1 We may at our discretion accept or reject the cancellation of any contract or the return of any goods not required. Any such cancellation or return shall be on such terms as we specify and we may charge you a handling fee and all costs incurred on cancelled orders.
- 10.2 We shall be entitled to cancel or suspend a contract if you fail to pay us any sum due pursuant to the contract (whether, or not any part of your account is subject to query) or any of the following events occur: (a) You have a bankruptcy order made against you or arrange or composition with your creditors, or otherwise take a benefit for the relief of insolvent debtors; or (b) You convene a meeting of creditors or enter liquidation; or (c) You have a receiver and/or manager, administrator or administrative receiver or appointer (d) A resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order in your respect, or any proceedings are commenced relating to your insolvency, or possible insolvency; or (e) You suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or (f) You are unable to pay your debts, or cease trading; or (g) Any event like the above occurs (h) You fail to observe or perform any of your obligations under the contract or any other contract between us and you; or (i) You encumber or in any way change any of the goods
11. **Health and Safety**
- 11.1 Certain goods supplied by us could, if incorrectly used, give rise to risk health and safety. Information in respect of such goods is available from us. You undertake that you will ensure compliance by your employees, agents and customers with any instructions given by us, the manufacturer or our supplier and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of any person handling, using or disposing of them.
12. **Waste**
- 12.1 You will be responsible for the disposal of any waste arising from the goods and will comply with applicable laws, regulations and waste management licences relating to such waste, including the appropriate disposal by you of any goods marked with a crossed-out wheellie bin symbol, save where you are a consumer and it is our responsibility by law. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.
13. **Force Majeure**
- 13.1 We may defer the date of delivery, cancel the contract or reduce the volume of the goods and/or services ordered by you (without liability to you) if we are unable to deliver or supply due to any cause beyond our reasonable control (including acts of omission by our suppliers).
14. **Overseas Contracts (if applicable)**
- 14.1 In relation to all goods sold outside the Isle of Man, risk in the goods shall pass to you when they leave our premises. Shipping and insurance shall be payable by you but will be managed by us unless otherwise agreed. You are responsible at your own expense for obtaining any licence and complying with any export or import regulations in force within the Isle of Man and any country for which the goods are destined. Certain goods imported by us are subject to certain restrictions. We reserve the right not to supply certain customers or countries and to require from you full details of the end use and destination of such goods.
15. **Compliance with Bribery Legislation**
- 15.1 You agree that you will not, about the goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees/affiliates, nor cause us to be in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or about any breach of this clause, whether, or not the contract has been terminated.
16. **General**
- 16.1 Any notice given pursuant to or in relation to the contract shall be in writing and addressed to the party concerned at its principal place of business at its principal place of business or last known address. Any notice shall be deemed delivered two days after posting or next working day after email transmission.
- 16.2 Any provision of the contract found to be invalid or unenforceable shall, to such extent, be deemed severable and the remaining provisions of the contract shall continue in full force and effect.
- 16.3 Failure or delay by us in enforcing any contract term shall not be construed as a waiver of any of our rights under the contract.
- 16.4 You shall not be entitled to assign or subcontract any of your rights or obligations under the contract.
- 16.5 Cu Plas Callow (IOM) Ltd shall be entitled to enforce any provision of the contract, no person who is not a party to the contract shall have a right to enforce any term of the contract which expressly or by implication confers a benefit on that person.
- 16.6 Any dispute or claim arising about the contract shall be governed by Manx Law and the parties submit to the exclusive jurisdiction of the Manx courts.