

TERMS & CONDITIONS OF SALE

1) INCORPORATING OF CONDITIONS AND FORMATION OF CONTRACT.

- a) All orders accepted and contracts of sales of goods ("The Goods") that are the subject of the Contract made by the Company to any buyer ("Buyer") shall be deemed to incorporate these terms and conditions which shall prevail over and take the place of any other terms and conditions stipulated, incorporated or referred to or contained in any purchase order or any other document of or communication from the Buyer in the course of negotiation.
- b) No other agreement, representation or promise of any kind shall form part of, alter, vary, supersede or operate as a waiver of these conditions or any of them expressly made or accepted by the Company in writing and signed by a director of the Company.
- c) A contract of sale shall be made when the order signed by or on behalf of the Buyer is signed by or on behalf of the Company.

2) PRICES

Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that

- a) All prices are exclusive of Value Added Tax which will be charged at the rate at the time of dispatch of the goods.
- b) In any event the Company shall be entitled without prior notice to adjust the stated price to take account of
 - i) any cost to the Company resulting from the delay by the Buyer in giving the Company sufficient information to enable it to supply the Goods or resulting from any alteration made at the request of the Buyer in the place to which they are to be delivered.
 - ii) Any increase in the cost to the Company of producing or delivering the Goods which occurs due to causes beyond the Company's control between the Contract and the date when delivery is complete including but without limitation increases in wages (whether in respect of overtime or otherwise) materials production or other costs or fluctuation in currency exchange rates, taxes, or similar levies or duties.
 - iii) Any extra cost to the Company resulting from Goods being carried at the request of the Customer by methods more rapid or expensive than normal goods rail and/or road transport and/or where applicable, cargo ships.
- c) The Company's prices are based on these conditions and reflect the limitation upon the Company's liability which they contain. However if the Buyer wishes to contract with the Company on conditions different from these then special arrangements can be made and a revised price will be quoted by the Company.

3) DELIVERY

- (a) The place for delivery is as agreed in writing between the Company and the Buyer.
- (b) Every effort is made to deliver Goods as soon as ready however dispatch or delivery dates are business estimates only and in no case is delivery on or by a fixed date a term of the Contract, late delivery shall not (subject to clause 4(b) below) be a ground for cancellation or refusal to take delivery and the Company accepts no liability for any loss (including consequential loss) or damages whatsoever and howsoever cause resulting from any delays in delivery in any circumstances.
- (c) Where the company concludes the contract of carriage and or insures the Goods in transit the Company shall be deemed to be acting solely as the Buyer agent and section **32(2) and (3) of the Sale of Goods Act 1979 shall not apply.**
- (d) The Company shall be under no liability whatsoever for any loss or damage deterioration, or delay to the goods whatsoever and howsoever caused during transit or in any event at any time after the risk has passed to the Buyer.
- (e) Delivery may be made by instalments and any failure or defect in one delivery will not vibrate the Contract as to the remaining deliveries.

4) CANCELLATION AND POSTPONEMENT OF DELIVERY

- a) Subject to sub-clause (b) below cancellation of an order accepted by the Company may only be made with the Company's prior written consent and will be subject to the payment of a cancellation fee of 10% of the value of the order (excluding VAT).
- b) Notwithstanding the provisions of Clause 3 (b) above the Buyer shall have the right to cancel the Contract if delivery is not made on or before the latest delivery date specified by the Company in writing to the Buyer.
- c) Where the Goods are ready for delivery the Company may in its absolute discretion postpone delivery at the request of the Buyer in which case the Buyer shall make payments as if the goods were delivered and invoiced on the date of such request and the Company may store the Goods at its own premises or elsewhere at the Buyers sole risk and all storage insurance and transport charges and other costs arising from postponement shall be payable by the Buyer on demand.

5) PAYMENT

Unless otherwise stated

- i) Payments date of invoice is strictly net 30 days from date of invoice.
- b) Unless otherwise expressly stated in writing, all prices stated are payable in pounds sterling
- c) The drawing and delivering by the Buyer or the acceptance by the Company of cheques or Bills of Exchange are honoured on presentation.
- d) Where deliveries in partial fulfilment of orders are made invoices will be issued in respect of that part of any order delivered and payment shall be made in accordance with the provisions of sub-clause (a) above.
- e) Any default in payment of an invoice or an instalment payable on an invoice on the due date shall render the entire balance outstanding on all invoices from the Company to the Buyer immediately payable in full without further demand being made notwithstanding any contrary provisions as to terms of payment in any one or all invoices.
- f) If full payment is not made by the due date the Company may suspend any further deliveries under the Contract until further payment is made (or without prejudice to any of its other rights) the Company may cancel the Contract in relation to such further deliveries and recover the Goods at the Buyer's expense.
- g) In the absence of any specific appropriation by the Buyer the Company shall have the right to appropriate any payment made by the Buyer towards the satisfaction of any invoice outstanding from time to time as the Company in its absolute discretion thinks fit.
- h) The Buyer shall have no right to withhold payments due to the Company under a contract by reason of complaints in respect of this or any other contract with the Company
No name or indulgence granted by the Company shall prejudice its rights or remedies.

6) PROPERTY AND RISK

- a) **Property in the Goods shall remain in the Company until the Company has received payment in full of the purchase price for the Goods and only then will property in the Goods pass to the Buyer.**
- b) The Goods shall be at the Buyer's risk from the time the goods are delivered to carriers for where applicable to the Post Office for transport to the Buyer or where carriage is effected by the Company upon despatch of the Goods from the Company's premises or where carriage is effected by the Buyer upon the Goods being handed to the Buyer or its carriers on the Company's premises The Buyer should insure accordingly.
- c) The Buyer will store the goods in such a way that they are readily identifiable as the property of the Company.
- d) So long as property in the Goods remains in the Company the Buyer authorises the Company to enter the Buyer's premises for the purpose of recovering the Goods
- e) Immediately on the happening of any of the termination events specific in Clause 12 below payment of the purchase price for the Goods shall become due despite any credit period allowed by the Company in Clause 5(a) above or otherwise and the Buyer shall cease to have any right to use resell or otherwise dispose of the Goods

7) GUARANTEE

- a) The Company undertakes to repair free of charge or (at its option) replace or refund or credit the value of Goods or any part thereof which are defective by reason of faulty workmanship of the use of defective materials provide that
 - i) The Buyer gives the Company written notice detailing the alleged defect within 14 days of the date upon which the Buyer shall reasonably have become aware of the same and in any event within 6 months from the date of delivery
 - ii) Defective or damaged Goods are promptly returned by the Buyer to the Company carriage and insurance paid in their original packaging (reasonable carriage expenses being refunded by the Company if it is held liable for the defect)
 - iii) The Company or its representative shall have had the opportunity to inspect the Goods and is satisfied that the damage or defect existed at the time of delivery to the Buyer and has not arisen by reason of misuse neglect or accident after the passing of the risk to the Buyer
- b) Unless otherwise agreed with the Company in writing, if only some of the Goods are defective, the Buyer shall accept the remainder of the Goods and be liable to pay the Contract price reduced pro-rata
- c) Any claim for short delivery must be notified to the Company in writing within 14 days of receipt by the Buyer and to the carrier (where relevant) or Post Office (where appropriate) within the carrier's (or Post Office's) specified time limit

- d) In the case of non-delivery, claims will not be entertained unless notified in writing to the carrier (where relevant) or Post Office (where appropriate) within the time limit specified by the carrier (or Post Office) and to the Company within 14 days of the date of the delivery documents or (where relevant) invoice.

8) **LIMITATION OF LIABILITY**

- a) The Buyer's attention is specifically drawn to Clause 2 of these conditions
- b) The guarantee given in Clause 7 above is given by the Company and accepted by the Buyer in substitution for any rights which the Buyer might otherwise have had
- i) By reason of any express or implied representation condition, warranty or otherwise as to the description merchantability quality or fitness of the Goods all such representations conditions and warranties being hereby expressly excluded.
- ii) In negligence or otherwise in tort arising out of or in connection with the supply of any Goods to or to the order of the buyer and all such liability whatsoever howsoever arising is hereby expressly excluded provided that nothing in this condition shall excuse the Company from any liability which it may incur for death or personal injury resulting from the negligence of its servants or agents
- c) Except for any such liability in respect of death or personal injury the Company shall not be liable in manner whatsoever whether in contract tort misrepresentation beyond the terms of the above guarantee and in particular shall not be liable for any indirect or consequential loss or loss of use profits or contracts suffered by the Buyer or damage or injury howsoever or by whosoever caused which may arise out of or in connection with supply of Goods to or to the order of the Buyer and in no circumstances shall the liability of the Company hereunder exceed the contractual price of the Goods and in a case where some only of the Goods are defective the liability of the Company shall not exceed an amount equal to such proportions of the contract price as the quantity of defective Goods bears to the aggregate quantity of Goods supplied.

9) **TRADEMARKS AND SALES**

- a) The Buyer acknowledges that the Company's suppliers of the Goods are the exclusive owners throughout the world of the JRB Golf Ltd trade marks, design marks, trade names and logo used in connection with the Goods and any copyright therein ("the Trademarks") and that all signs and displays, display furniture or other materials supplied whether free of charge or otherwise for the purpose of display or advertising remain the property of the Company and that accordingly the Buyer shall use such signs, displays and advertising material only in such manner as shall be approved by the Company from time to time The Buyer undertakes that it will not remove, conceal or otherwise interfere with any of the Trademarks affixed or applied to the Goods or do anything which will in any way damage the reputation or goodwill of the Trademarks and that it will immediately bring any improper or wrongful use or possible infringement of the Trademarks which comes to its notice to the Company's attention and will (at the Company's request and expense) take all such steps and do all such things that the Company may reasonably require to protect and defend the Trademarks. The Buyer further undertakes that it will discontinue the display or use of such Trademarks when so requested by the Company and there after the Buyer will not directly or indirectly use any such Trademarks or colourable imitations thereof or other marks or names so resembling them as to be likely to cause confusion or mistake or to deceive the public
- b) The Buyer undertakes that
- i) Subject to sub-clause (b) below end of season's Goods and close outs bearing the Trademarks will not be sold without the prior written approval of the Company
- ii) End of season Goods as well as any Goods which have been reduced in price for any reason whatsoever (e.g. surplus stock, shop soiled etc) bearing the Trademarks shall only be sold by way of Sale twice a year during the months of January and July and the Buyer undertakes to take all steps necessary to ensure that such Sales do not in any way damage the reputation of goodwill of the Trademarks
- iii) It will submit all advertisements proposed to be made in connection with any sales of the goods and will further submit all advertising or promotional materials to the Company for its prior written approval
- iv) It will not sell the Goods otherwise than in the ordinary course of its business

10) **CONTENTS**

The Buyer hereby undertakes to obtain and maintain in force on its own expense all consents, licences and permission necessary for the storage, resale, marketing or use of the goods in accordance with any relevant statute regulation or bye law and within the general law.

11) **FORCE MAJEURE**

The Company shall not be liable for failure to perform or for delay in performing any of its obligations hereunder resulting

12) **TERMINATION**

The Company shall have the right forthwith to cancel this contract by written notice to the address of the Buyer last known to the Company without prejudice to the Companies right to recover Damages if;

- a) The Buyer defaults or commits any breach of any of its obligations to the Company
- b) Any distress or execution is levied or enforced upon any property of the buyer or
- c) The buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or
- d) Any resolution is passed or petition is presented to wind up the Buyer, or
- e) A Receiver is appointed or an Encumbrancer takes possession of any or part of the undertaking or assets or property of the Buyer, or
- f) The Buyer stops payment or ceases or threatens to cease to carry on its business or to pay its debts as and when they fall due
- g) There is any change in control of the Buyer. For the purposes of this sub-clause, the word control shall have the meaning ascribed to it in [Section 302 of the income and Corporation Taxes act 1970](#).

13) **ASSIGNMENT**

The buyer shall not assign transfer or subject any of its rights or obligations under this contract without the prior written consent of the Company.

14) **WAIVER**

No forbearance or indulgence on the part of the Company in enforcing these terms and conditions shall prejudice strict rights there under nor shall be construed to be a waiver thereof.

15) **SEVERANCE**

If any clauses in these terms and conditions or any part of them is rendered void or unenforceable by any legislation to which it is subject it shall be void to that extent only or if unenforceable then it shall be unenforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance upon it and no further.

16) **GOVERNING LAW.**

All contracts shall be governed in accordance with the laws of England to the exclusive jurisdiction of those courts the parties by their agreement hereto shall irrevocably be deemed to have submitted.

17) **CLAUSE HEADINGS**

Clause headings are for ease of reference only and do not affect the interpretation or contraction of these terms and conditions.

18) **OWNERSHIP OF GOODS**

Ownership and the title of goods which are the subject of any order will only pass to the purchaser when all outstanding invoices are completely paid within [the Companies Act of 1985](#).