

# Fairchild Limited

## General Conditions of Sale

### All contracts of sale for any Goods by the Company shall be on and subject to these Conditions

#### 1. INFORMATION ABOUT GOODS

- 1.1 Any description, specification, drawing or particular of dimension or weight published by Fairchild Limited ("the Company") in relation to the Goods shall not form part of any contract of sale by the Company.
- 1.2 The purchaser ("the Customer") acknowledges that in assessing whether the Goods are reasonably fit for any particular purpose for which it is purchasing them it has not relied on the skill or judgment of the Company and it acknowledges that the specification of Goods may be changed from time to time, and the Company shall have no liability in respect of such amendments.
- 1.3 The Company does not warrant that Goods ordered under this Contract will be available for future orders.

#### 2. ORDERS

- 2.1 No order shall be binding on the Company unless and until expressly accepted by the Company in writing or acceptance is deemed to have been made by way of delivery of the Goods the subject of the Order.
- 2.2 No Order given or accepted may be cancelled or amended except with the written consent of the Company. The Customer shall in respect of any cancellation or amendment by it of any Order given or accepted, on demand pay an administration fee of 20% of the Contract or Order price and will also indemnify the Company in respect of any and all irrecoverable loss and expenses suffered or incurred by the Company in connection with the same.

#### 3. CONTRACT

- 3.1 The Company shall sell and the Customer shall purchase the Goods in accordance with the written Order of the Customer accepted by the Company in writing ("the Order"), and with these Conditions.
- 3.2 The Order, these Conditions, and any such special terms (together in these Conditions "the Contract") represent the entire understanding, and supersede any previous agreement, between the Company and the Customer in relation to their subject matter.
- 3.3 The Customer shall not in entering into the Contract rely on any warranty or representation except those expressly set out in the Contract. Save only as provided in these Conditions all liability for any warranty or representation not so excepted is excluded.

#### 4. PRICE

- 4.1 The price payable for the Goods shall be the price specified in the Order, provided that the Company has accepted such price in its acknowledgement of Order.
- 4.2 The Price is exclusive of Value Added Tax and the Customer shall pay Value Added Tax in respect of the Price at the applicable rate prevailing at the date of invoice, and all other taxes, duties or imposts arising in connection with the sale.
- 4.3 The Customer shall pay the Company's charges for transport, packaging and insurance ("the Delivery Charge").

#### 5. PAYMENT

- 5.1 Payment of the Price and of the Delivery Charge shall be made in pounds sterling at the office of the Company specified in the Order. All payments shall be made in full without deduction in respect of any right of set-off or counter-claim.
- 5.2 Payment shall be made within 30 days of the date of invoice, failing which the Company may charge interest at the rate of 7% above the base rate of National Westminster Bank plc from time to time from the date that payment fell due until the date that payment is made in full.

#### 6. DELIVERY

- 6.1 Any delivery time indicated by the Company is an estimate only and the Company shall not have any liability whatsoever for failure to deliver the Goods at or within any such delivery time. The Company may deliver the Goods in advance of any delivery time indicated by the Company upon giving reasonable notice to the Customer.
- 6.2 The Company shall on behalf of the Customer send the Goods by a third party carrier to the agreed delivery address ("the Delivery Address"). Delivery shall be deemed to take place when the Goods arrive at the Delivery Address (before unloading).
- 6.3 The Company shall not be liable for any damage to, deterioration in, or partial loss of the Goods in transit if the matter should have been apparent on a reasonable examination on delivery, unless the Company receives notice thereof from the Customer within 7 days of delivery.
- 6.4 The Company's liability to the Customer and/or any third party in respect of partial delivery shall be limited only to the cost to the Customer of the Goods not delivered.
- 6.5 Where the Customer has rejected any of the Goods or notified any damage or deterioration under this Condition 6 the Customer shall at its own expense and risk, return the Goods to the Company.
- 6.6 All packaging in which the Goods are sold shall be at the Customer's risk after delivery. The Customer shall return such packaging to the Company with any Goods returned to the Company for whatsoever reason.
- 6.7 The Customer shall pay to the Company a surcharge equivalent to 3% of the Contract Price per week in respect of any amendment to the Delivery date requested by the Customer.

#### 7. RISK

All risk in the Goods shall pass to the Customer on delivery.

#### 8. TITLE

- 8.1 Notwithstanding delivery the property in the Goods shall remain in the Company and shall not pass to the Customer until the Company has received in respect of the Company's Goods payment in full including but not limited to Value Added Tax, interest owed or accrued, the Delivery Charge, or until the Goods are sold by the Customer in accordance with Condition 8.4 below.
- 8.2 Subject to the Company giving 24 hours notice the Company's representatives shall be allowed to enter at all reasonable times upon any land or buildings on or in which the Company's Goods may be situated for the purpose of inspecting the way in which the Goods are being kept.
- 8.3 During such time as the property in the Goods remains in the Company, the Customer in possession of the Goods shall hold the Goods as bailee of the Company and shall have power to deal with and use and dispose of the Goods in the normal course of its business and to dispose of the Goods as the Company's agent by way of bona fide sale at full market value.
- 8.4 If the Customer shall sell any of the Goods it shall hold all the proceeds of sale as trustee for the Company.

- 8.5 The Company shall be entitled to repossess all or any of the Goods upon the happening of any of the events specified in Condition 12.2 or if at any time the Company considers that the Customer might be unable to make payment in full. For the purpose of repossession of any of the Goods pursuant to this Condition, the Company or its agent shall be entitled to enter upon any land or buildings on or in which the Goods may be or are reasonably thought by the Company to be situated with such transport as may be necessary and to remove any of the Goods. All costs incurred by the Company or its agent in repossessing the Goods shall be paid by the Customer on demand.

- 8.6 In this condition 8:-

"Goods" means the whole of the goods the subject of the Contract; "Company's Goods" means the Goods and all other goods delivered by the Company any time to the Customer

#### 9. WARRANTY

- 9.1 The Company accepts responsibility for defects in materials and workmanship in the Goods which arise within the period of 12 months from the date of delivery to the extent that such faults or defects are not caused by the unreasonable use of the Goods or by a use not in accordance with any user manuals supplied and fair wear and tear is excepted.
- 9.2 The Customer shall first notify the Company by telephone of any claim to be made pursuant to clause 9.1 as soon as any defect becomes apparent. The Company will issue the Customer with a return number ("RMA").
- 9.3 The Customer shall then forward the defective Goods, together with a copy of the invoice and RMA to the Company in accordance with clause 6.5. The Company may charge a fee for the return of Goods which are not in breach of the terms of the warranty under clause 9.1.

#### 10. LIABILITY

- 10.1 The implied terms in the Sale of Goods Act 1979 are excluded except the implied terms about title.
- 10.2 Save only as provided in these Conditions the Company shall not be liable for any defect in the Goods except to the extent set out in clause 9.
- 10.3 Subject to clause 6.3 and save only as provided in these Conditions the Company shall not be liable for any defect in the Goods which should have been apparent on a reasonable examination on delivery unless the Company receives notice of the defect from the Customer within 7 days of delivery.
- 10.4 Save only as provided in these Conditions the Company shall not in any event be liable for any special, indirect or consequential loss, damage, costs or claims including but not limited to loss or damage resulting from negligence and loss of profit or revenue.
- 10.5 Save only as provided in these Conditions the Company's aggregate liability to the Customer in respect of any and all causes of action arising at any time in connection with the Goods, the Contract or its other subject-matter shall not exceed the Contract price, which sum the Customer agrees is reasonable.
- 10.6 These Conditions shall not exclude, restrict or limit any liability the exclusion, restriction or limitation of which is for the time being prohibited by legislation or any right or remedy in respect of any such liability.
- 10.7 Each of the exclusions, restrictions and limitations of the Company's liability in these Conditions shall be without prejudice to every other such exclusion, restriction or limitation.
- 10.8 Each of the exclusions, restrictions and limitations of the Company's liability in these Conditions shall be separate and severable from every other such exclusion, restriction or limitation. If a court of competent jurisdiction finds any of such exclusions, restrictions or limitations to be unenforceable to any extent the exclusions, restrictions and limitations shall save to such extent remain in full force and effect.

#### 11. USE

The Goods are designed only for use in accordance with any user manuals or the Company's or manufacturers' directions or instructions supplied in relation to the Goods and with replacement parts, accessories and equipment supplied by the Company.

#### 12. DEFAULT

- 12.1 If any of the events specified in Condition 12.2 occurs all monies accrued owing under the Contract shall become immediately due and payable and the Company shall be entitled at any time thereafter to terminate the Contract and any other contract between the Company and the Customer by notice, and/or to suspend further deliveries of goods the subject of any or all such contracts.
- 12.2 The events referred to in Conditions 8.5 and 12.1 are the Customer makes default in or commits a breach of the Contract, any distress or execution is levied upon the Customer's property or assets, the Customer makes or offers or proposes to make any arrangement or composition with its creditors, any resolution or petition to wind up the Customer is passed or presented, any petition for an administration order in respect of the Customer is presented, a petition for a bankruptcy order is made against the Customer, or a receiver or manager of the Customer's undertaking, property or assets or any part thereof is appointed.

#### 13. FORCE MAJEURE

Should the Company be prevented from or hindered or delayed in performing any of its obligations under the Contract by reason of trade dispute (whether involving the Company's or a third party's employees), or of non-availability, interruption or failure of or delay in the Company's usual supply sources, acts of national or local government or other authority, Act of God, storm, tempest, fire, flood, explosion, accident, theft, civil disturbance, insurrection or war or by any other cause whatsoever beyond the Company's reasonable control then the Contract may be suspended and/or cancelled (whether or not while suspended) by the Company by notice and the Company shall have no liability in relation to any failure by it caused by such prevention, hindrance or delay, or any such delay, suspension or cancellation.

#### 14. GENERAL

- 14.1 Each of the rights and remedies conferred on the Company by this contract.
- 14.2 No failure or delay by the Company to enforce any of its rights under the Contract shall constitute waiver thereof.
- 14.3 If any of these Conditions shall be held unenforceable, the remaining Conditions shall have full force and effect.
- 14.4 Any notice under the Contract shall be given by letter.
- 14.5 The Contract shall be governed by and construed in all respects in accordance with English law and the Customer shall submit to the jurisdiction of the Supreme Court of Justice in England in respect of any matters which may arise in connection with the Contract.