

JOLODA INTERNATIONAL LTD

CONDITIONS OF SALE

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with their terms

Contract: the contract between Joloda and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Joloda.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 14.1.

Goods: the goods (or any part of them) described in the sales order acknowledgment form issued by Joloda to the Customer after the Customer's order has been submitted.

Goods Specification: the specification for the Goods, contained on the website and/or in Joloda's catalogue as at the date on which the Order is submitted, or such other specification including any relevant plans or drawings, that is agreed in writing by the Customer and Joloda.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Joloda: Joloda international Ltd registered in England and Wales with company number 2757012.

Joloda Materials: all drawings, plans, designs, specifications, samples information and other technical data of or in relation to the Goods.

Order: the Customer's order for the supply of Goods as set out in Joloda's sales order acknowledgment form.

Services: the services supplied by Joloda to the Customer as set out in the Order.

Website: Joloda's website at www.joloda.com or such other website as may replace the same from time to time.

1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.3 a reference to writing or written includes e-mails, unless otherwise stated in these Conditions.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by Joloda to sell the Goods to the Customer in accordance with these Conditions.

2.2 The Customer shall promptly and in any event within [5] Business Days of receipt of Joloda's sales order acknowledgment form, notify Joloda in writing of any discrepancies in such sales order acknowledgment form or that Joloda's offer as described in clause 2.1 is not accepted. If no such notification is received by Joloda within this period, Joloda's offer shall be deemed to be accepted, and the Contract shall come into existence on the [6th] Business Day.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Joloda which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Joloda and any descriptions of the Goods and/or the Services contained in Joloda's catalogues or brochures and/or on the website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOOD

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Joloda against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Joloda in connection with any claim made against Joloda for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Joloda's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Joloda reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOOD

4.1 If the Order specifies that the Goods are to be delivered by Joloda, Joloda shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") in writing at any time after Joloda notifies the Customer that the Goods are ready.

4.2 If the Order specifies that the Customer is to collect the goods, the Customer shall collect the Goods from Joloda's premises as specified in the Order at or such other location as may be advised by Joloda before delivery within 5 Business Days of Joloda notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed:

- on the Goods' arrival at the Delivery Location if the Order specifies that the Goods are to be delivered; or
- on the completion of loading of the Goods at the Delivery Location if the Order specifies that the Goods are to be collected by the Customer; or
- on the completion of unloading of the Goods at the Delivery Location if the Order specifies that the Goods are to be delivered and unloaded by Joloda.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Joloda shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Joloda with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Joloda fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Joloda shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Joloda with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of Joloda notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Joloda's failure to comply with its obligations under the Contract in respect of the Goods:

- delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which Joloda notified the Customer that the Goods were ready; and
- Joloda shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 20 Business Days after Joloda notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted (as the case may be) delivery of them, Joloda may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 Joloda may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.9 Goods will be delivered Ex Works (as such term is defined in Incoterms 2010), unless otherwise stated on Joloda's sales order acknowledgment form.

5. QUALITY OF GOODS

5.1 Joloda warrants that on delivery, the Goods shall conform with the Goods Specification and be of satisfactory quality and will continue to do so from completion of delivery until the end of the period specified in the Goods Specification, or if none is specified, for a period 12 months from completion of delivery (warranty period).

5.2 Subject to clause 5.3, if:

- the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- Joloda is given a reasonable opportunity of examining such Goods; and
- the Customer (if asked to do so by Joloda) returns such Goods to Joloda's place of business at the Customer's cost,

Joloda shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full (if paid).

5.3 Joloda shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- the defect arises because the Customer failed to follow Joloda's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods;
- the defect arises as a result of Joloda following any drawing, design or Goods Specification supplied by the Customer;
- the Customer alters or repairs such Goods without the written consent of Joloda;
- the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, Joloda shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any [repaired or] replacement Goods supplied by Joloda under clause 5.2, save that the warranty period applicable to any repaired Goods shall not be extended by reason of this clause 5.5.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Where the Order states that Goods are to be delivered on a basis other than Ex Works, Joloda shall have no liability to the Customer if the Goods are damaged or lost in transit, unless Joloda is notified in writing of such damage or loss within 10 Business Days of completion of delivery.

6.3 Title to the Goods shall not pass to the Customer until the earlier of:

- Joloda receives payment in full (in cash or cleared funds) for the Goods; and
- the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.5.

6.4 Until title to the Goods has passed to the Customer, the Customer shall:

- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Joloda's property;
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Joloda's behalf from the date of delivery;
- notify Joloda immediately if it becomes unable to pay its debts subject to any of the events listed in clause 13.1(b) to clause 13.1(k); and
- give Joloda such information relating to the Goods as Joloda may require from time to time.

6.5 Where agreed by Joloda in writing, the Customer may, subject to clause 6.6, resell or use the Goods in the ordinary course of its business (but not otherwise) before Joloda receives payment for the Goods. However, if the Customer resells the Goods before that time:

- it does so as principal and not as Joloda's agent; and
- title to the Goods shall pass from Joloda to the Customer immediately before the time at which resale by the Customer occurs.

6.6 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in 13.2 (b) to 13.2 (k) then without limiting any other right or remedy which Joloda may have:

- the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- Joloda may at any time before title to the Goods passes to the Customer:
 - require the Customer to deliver up all Goods in its possession which have not been irrevocably incorporated into another product; and
 - if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 Joloda shall provide the Services to the Customer in accordance with the Contract.

7.2 Joloda shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Joloda shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Joloda shall notify the Customer in any such event.

7.4 The Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- co-operate with Joloda in all matters relating to the Services;
- provide Joloda, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by Joloda to provide the Services;
- provide Joloda with such information and materials as Joloda may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- obtain and maintain any necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

8.2 If Joloda's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) Joloda shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Joloda's performance of any of its obligations;

(b) Joloda shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Joloda's failure or delay to perform any of its obligations as set out in this clause 8.2; and

(c) the Customer shall reimburse Joloda on written demand for any costs or losses sustained or incurred by Joloda arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order. Except where the Contract states otherwise, the price of the Goods is exclusive of all costs and charges of insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The charges for Services shall be the charges set out in the Order:

9.3 Joloda reserves the right to increase the price of the Goods (or where Goods to be delivered by instalments, the price of the Goods comprised in any such instalment), by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Joloda that is due to:

- any factor beyond the control of Joloda (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Joloda adequate or accurate information or instructions in respect of the Goods.

9.4 Payment for Goods and Services shall be on a "cash with order" basis, unless otherwise agreed in writing. Where the parties have agreed that payment will not be on a "cash with order" basis, the Customer shall pay each invoice submitted by Joloda:

- within 30 days of the date of the invoice; and
- in full and in cleared funds to a bank account nominated in writing by Joloda.

Time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Joloda to the Customer, the Customer shall pay to Joloda such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.6 If the Customer fails to make any payment due to Joloda under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount. In accordance with the Late Payment of Commercial Debts (Interest) Act 1998, or if that Act does not apply to the Contract, at the rate of 4% per annum above the average of the base rates of the four major United Kingdom clearing banks from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.7 Each party shall pay all amounts due under the Contract to the other in full without any set-off, counterclaim, deduction or withholding except as required by law.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Joloda.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Joloda obtaining a written licence from the relevant licensor on such terms as will entitle Joloda to license such rights to the Customer.

10.3 All Joloda Materials are the exclusive property of Joloda.

11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. For the avoidance of doubt, Joloda's Materials shall be treated as confidential information of Joloda for the purposes of this clause. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude Joloda's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- Joloda shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- Joloda's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed (the total of the price of the Goods as set out in the Order and the charges for the Services (if any) set out in the Order.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company);
- a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(g) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(h) (inclusive);

(j) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

(k) the other party's financial position deteriorates to such an extent that in the opinion of the party giving notice the other party's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, Joloda may:

(a) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Joloda if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(k), or Joloda reasonably believes that the Customer is about to become subject to any of them.

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to Joloda all of Joloda's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Joloda shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Joloda including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Joloda or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 Joloda shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents Joloda from providing any of the Services and/or Goods for more than 4 weeks, Joloda shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

Assignment and other dealings.

(a) Joloda may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Customer shall not, without the prior written consent of Joloda, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

Notices.

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if sent by fax, one Business Day after transmission, or if sent by email, at the time of transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Joloda.

15.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).