

Terms and Conditions: Equipment



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 and Wales) when banks in London are open for business.

"Conditions": the terms and conditions set out in this document as varied by the Supplier from time to time.

"Confirmation": the Supplier's written confirmation of the Customer's Order.

"Contract": the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer": the purchaser of the Goods from the Supplier as named in the Confirmation.

"Delivery": the delivery of the Goods as defined at clause 3.2.

"Force Majeure Event": has the meaning given in clause 9.

"Goods": the units or equipment (or any part of them) set out in the Confirmation.

"Order": the Customer's order for the supply of the Goods, which may take the form of an order form, the Customer's written acceptance of the Supplier's quotation or an oral request for the purchase of Goods, as the case may be.

"Supplier": JLA Limited (registered in England and Wales with company number 01094178) and any of its group companies, successors or assignees.

"Used Goods": Goods which have already been sold, used or rented prior to being sold to the Customer, and are described as such.

2. BASIS OF CONTRACT

2.1 The Customer is acting as a business not a consumer in ordering the Goods and entering into the Contract and represents and warrants to the Supplier that this is the case.

2.2 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.

2.3 The Confirmation constitutes the acceptance by the Supplier of the Customer's Order in accordance with these Conditions. The Customer is responsible for ensuring that its Order is complete and accurate.

2.4 The Order shall only be deemed to be accepted when the Supplier issues the Confirmation, at which point the Contract shall come into existence.

2.5 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 the Supplier which is not set out in the Contract.

2.6 Any descriptions or illustrations contained in the Supplier's catalogues, brochures or advertising are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 A quotation for the Goods given by the Supplier shall not constitute an offer.

2.8 The Contract may be cancelled by the Customer only with the Supplier's written consent. In the event of such cancellation, the Supplier reserves the right to charge a cancellation fee, to be paid in accordance with clause 6 and calculated as being a minimum of £50 plus VAT but subject to increase to reflect the Supplier's costs incurred to the date of cancellation, plus loss of profit.

3. DELIVERY

3.1 The Supplier shall deliver the Goods to the location set out in the Confirmation or such other location as the parties may agree in writing ("Delivery Location").

3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

3.3 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Goods.

3.4 If the Supplier fails to deliver the Goods, it shall have no liability other than to refund any sums already paid for the Goods by the Customer.

3.5 Any claim in respect of an error in the quantity or the type of Goods or in respect of the condition of Goods delivered or any damage caused to the Goods in delivery must be made in writing to the Supplier within three (3) Business Days of Delivery.

3.6 If the Customer fails to accept delivery of the Goods within three (3) Business Days or the earlier of the Supplier notifying the Customer that the Goods are ready to be delivered or attempting to deliver the Goods (the "Expected Delivery Date"), then, except where such failure or delay is caused by a Force Majeure Event:

(a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the Expected Delivery Date; and

(b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including storage, costs of attempted delivery and insurance), such charge to be invoiced to the Customer and payable within 30 days of the date of such invoice.

3.7 If ten (10) Business Days after the Expected Delivery Date the Customer has not accepted delivery of the Goods, the Supplier may at its discretion:

(a) resell or otherwise dispose of part or all of the Goods; and / or

(b) charge the Customer all reasonable costs incurred including but not limited to attempted delivery and storage costs; and/or

(c) charge the Customer for any shortfall below the resell price of the Goods or; and/or

(d) charge the Customer 50% of the agreed price of the Goods if the Goods are deemed to be a "Special Order" as specified in the Confirmation.

4. INSTALLATION AND COMMISSIONING

4.1 The Goods will be installed by the Supplier (or its appointed agents or subcontractors) if agreed in the Confirmation and the price for such installation shall be set out in the Confirmation.

4.2 The Goods must not be used until the Supplier's testing of the Goods to verify their functions ("Commissioning") has been completed and any such use prior to this is at the Customer's own risk. The charge for Commissioning is included in the price of the Goods unless the circumstances in clause 4.3 apply.

4.3 If the Goods are installed by the Customer, the Customer shall ensure that the Goods are installed in accordance with the manufacturer's specifications and as outlined in any installation documents provided. If such installation is found to be incomplete or incorrect the Supplier will advise the required

action to complete the installation according to the agreed specification and the Supplier may also agree a fee with the Customer for undertaking such work. Such fee will be invoiced and payable in accordance with clauses 6.6 to 6.8.

4.4 Any works the Customer carries out to its premises in anticipation of the installation of the Equipment are strictly at the Customer's own expense and risk and the Supplier shall have no liability in relation to such works.

4.5 If Goods, which are catering equipment, require an article of stainless steel furniture being a flat top with supports ("Tabling") then:

(a) the Supplier will undertake a site survey and produce a CAD drawing for the Customer to approve before such Tabling is manufactured; and

(b) the charges for the Tabling will be itemised and charged separately to the Customer.

5. QUALITY, TITLE AND RISK

5.1 The Supplier warrants, solely in relation to Goods which are new, and excluding any Used Goods, that on Delivery and for a period of 12 months (or any other period as specifically confirmed in writing by the Supplier) from the date of Delivery ("Warranty Period") the Goods shall:

(a) conform in all material respects with their description; and

(b) be free from material defects in design, material and workmanship.

5.2 A warranty claim under clause 5.1 will be accepted by the Supplier provided that;

(a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods;

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, and

(d) the Supplier, acting reasonably, agrees that the Goods are defective and none of the situations in clause 5.3 or 5.4 apply; and in such cases the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods. This shall be the Customer's sole and exclusive remedy in respect of a breach of the warranty set out in clause 5.1.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2(a); or

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same; or

(c) the Customer alters or repairs such Goods without the written consent of the Supplier; or

(d) the defect arises as a result of fair wear and tear, incorrect installation where such installation is not carried out by the Supplier, willful damage, negligence, or abnormal storage, maintenance or working conditions.

5.4 The warranty at clause 5.1 does not cover:

(a) The following parts; bulbs, fuses, ironer covers, seals, belts, garment finishing covers and pads, lint screens, coin mechanisms,

(b) Loss or damage caused by any failure or malfunction in any supply service (including electricity, water, gas, steam) or any connection to such service or any external plumbing, drainage or ducting; or

(c) Where Goods are coin-operated, adjustments to the coin mechanism or repairs caused by the use of worn, damaged or wrong coins;

(d) Goods which have been modified, customised or tampered with.

5.5 The Supplier may charge the Customer a fee for any call out or service visit made in relation to a warranty claim under clause 5.1 where;

(a) the call out or service visit is no longer required but the Customer has failed to give the Supplier reasonable advanced notice of cancellation;

(b) a service engineer attends but is denied access;

(c) the call relates to a warranty claim that is not accepted by the Supplier in accordance with clause 5.2; or

(d) the Goods are found to be in good working order and there is no fault found.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 The risk in the Goods shall pass to the Customer on Delivery (whether deemed or actual).

5.8 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

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

(a) not remove or, deface any identifying mark on or relating to the Goods;

(b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2; and

(d) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

5.10 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 7.2, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

(a) require the Customer to deliver up all Goods in its possession; and/or

(b) 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.

6. PRICE AND PAYMENT

6.1 The price of the Goods shall be the price set out in the Confirmation.

6.2 The Supplier may, by giving notice to the Customer at any time up to two Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

(b) any increased charge to the Supplier by the manufacturer of the Goods due to a Force Majeure Event; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

6.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer. These costs will be shown on the delivery note.

6.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

6.5 The Supplier may invoice the Customer for the Goods on or at any time after the Confirmation is issued and will require payment in cleared funds before Delivery can be arranged unless otherwise agreed in writing by the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier.

6.6 If the Supplier has agreed in writing to payment being made after Delivery, payment shall be due 30 days from date of invoice unless otherwise specified by the Supplier. Time of payment is of the essence.

6.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate of Bank of England 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.

6.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. TERMINATION AND SUSPENSION

7.1 If the Customer becomes subject to any of the events listed in clause 7.2, the Supplier may without prejudice to its other rights as set out in the Contract terminate the Contract with immediate effect by giving written notice to the Customer.

7.2 For the purposes of clause 7.1, the relevant events are: (a) the Customer 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 an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

(b) (being a company) 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 Customer; or

(c) (being a company) 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 Customer; or

(d) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver; or

(e) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets; or

(f) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; or

(g) (being an individual) the Customer is the subject of a bankruptcy order, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

7.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 7.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

7.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

7.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) defective products under the Consumer Protection Act 1987; or

(e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.2 Subject to clause 8.1:

(a) the Supplier shall under no circumstances whatsoever 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

(b) the Supplier'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 price of the Goods.

9. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

10. GENERAL

10.1 Assignment and other dealings

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

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

10.2 Notices

(a) Any notice or other communication given to a party under or in connection with the 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 pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(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 10.2; 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; or, if sent by fax or email, at 9:00 am on the Business Day after transmission.

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

10.3 Severance

(a) 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.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

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

10.6 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 in writing and signed by the Supplier.

10.7 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

10.8 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).

11. DATA PROTECTION

11.1 The Supplier is entitled to make searches about the Customer at credit reference agencies. The agencies may record details of searches whether or not the Supplier agrees to enter into the Contract.

11.2 The Supplier may use credit-scoring methods to assess whether or not to enter into the Contract with the Customer and, in some cases, to verify the Customer's identity. This information may also be used for debtor tracing, to prevent money laundering, and to help with the Supplier's creditrisk and fraud protection activities.

11.3 If the Supplier enters into the Contract with the Customer, the Supplier may provide on-going details to the credit reference agencies where the Customer fails to pay on time or defaults under the Contract.

11.4 The Supplier will store the Customer's contact details on its customer database which will be shared with other members of the JLA Group and external third parties (such as sub-contractors) acting on the Supplier's behalf as necessary to fulfil the Supplier's obligations under the Contract.

11.5 The Supplier may also use the Customer contact details to contact the Customer from time to time about other products and services provided within the JLA Group. If as a Customer you do not wish the Supplier to use your personal data in this way then please tick this box and return a copy of these Conditions to the Supplier for the attention of Marketing at Meadowcroft Lane, Ripponden, West Yorkshire, HX6 4AJ or alternatively email dataprotection@jla.com with the words "I do not wish to receive any further information about other products and/or services provided within the JLA Group."