

BPW ASIA PTE LTD
STANDARD TERMS & CONDITIONS OF SALE

1. Interpretation

"Buyer" means the person who accepts a quotation of the Seller for the sale of Goods for whose order for the Goods is accepted by the Seller.

"Goods" means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Conditions.

"Seller" means BPW Asia Pte Ltd registered in the Republic of Singapore.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"Contract" means the contract for the purchase and sale of the Goods.

"Writing" includes telex, cable, facsimile transmission, email and other comparable means of communication.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid

- or agreed to be paid by the Seller in settlement of any claim for infringement of any copyright, design, trade mark and/or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 4. Data, Documents and Trade terms**
- 4.1 Data, such as illustrations, drawings or specifications of weight, dimensions, performance or consumption, provided in connection with any offer or sales confirmations, shall be approximations only, and unless the Seller has specifically stated or agreed otherwise in writing, the Seller retains the ownership and copyright to all data, costs, estimates, illustrations, drawings, specifications and other documents ("Seller's Documents") furnished by the Seller. Except with the written consent of the Seller, the Buyer hereby undertakes not to disclose to any other party, the Seller's documents or any part thereof or any plans which have been marked as confidential and delivered to the Buyer by the Seller.
- 5. Price of the Goods**
- 5.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Unless otherwise agreed, all prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 5.4 The price is exclusive of any applicable general sales tax, duties and/or other governmental charges, which the Buyer shall be additionally liable to pay to the Seller.
- 5.5 The costs of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

6. Terms of payment

- 6.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2 Unless otherwise agreed, the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- 6.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 6.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or
 - 6.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 1.5 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7. Delivery

- 7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed to by the Seller, by the Seller delivering the Goods to that place subject to Clause 5.3.
- 7.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed to by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 7.5 If the Buyer fails to take delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 7.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

- 7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.
- 8. Liability**
- 8.1 Any claims of the Buyer against the Seller shall be excluded where the damage is caused by the Buyer's improper operation, maintenance and installation, failure to comply with instructions, unsuitable or inappropriate use, incorrect or negligent treatment, incorrect repair and fair, wear and tear.
- 8.2 If the Buyer intends to assert any claims against the Seller, he shall forthwith consult the Seller and shall comprehensively inform and give the Seller the opportunity to investigate the damage sustained by the Buyer. The contracting parties shall consult each other on all steps intended to be taken, and in particular strongly endeavour to negotiate an amicable settlement of such dispute.
- 9. Risk and Property & Retention of Title**
- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
- 9.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 9.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 9.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 9.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 9.5 The Buyer shall inform the third party of the Seller's right to collect the equivalent of all sums due and owing by the Buyer to the Seller in respect of the Seller's Goods from the third party.
- 9.6 Any proceeds of sale received by the Buyer from the third party shall be held in trust for the Seller and the Buyer shall be liable to fully account to the Seller all such proceeds.
- 9.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller

- shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.8 The Buyer shall notify the Seller in writing of any deficiency in quality or defects in any of the Goods delivered to the Buyer as soon as such deficiencies or defects have been discovered in the course of ordinary business practice, and in an event, no later than 4 weeks, time being of the essence after arrival of the Goods at the port or place of destination. Thereafter it shall be deemed that all Goods delivered to the Buyer are neither deficient in quantity nor defective in any way whatsoever upon delivery.
- 10. Exclusion of all Warranties**
- 10.1 Examination of the Goods has been made by or on behalf of the Buyer prior to the signing of this Contract and the Buyer acknowledges that the Goods are sold on an "as it is" basis. No warranty condition description or representation on the part of the Seller is given or implied by this Contract nor is any warranty condition description or representation to be taken to have been given or implied from anything said or written in the negotiations between the parties or their representatives prior to this Contract and any statutory or other warranty condition or description express or implied as to the state quality or fitness of the Goods subject to this Contract is hereby expressly excluded.
- 10.2 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
- 10.3 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 10.4 The Seller shall be under no liability if the total price for the Goods has not been paid by the due date for payment.
- 10.5 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.6 Any claim by the Buyer which is based on failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery. If the delivery is not refused, and/or the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.7 Where any valid claim in respect of any of the Goods which is based on their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and the Seller shall have no further liability to the Buyer.
- 10.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

11. Exclusion and Limitation of Liability

- 11.1 The Buyer acknowledges that in purchasing the Goods the Buyer relied upon the Buyer's own skill and judgment in the selection thereof and in the use and result the Buyer intends to obtain therefrom.
- 11.2 The Seller shall not be liable for any loss or damage including any consequential loss or damage which may result from the supply of or failure to supply the Goods or the failure of the Goods to operate in accordance with their specification.
- 11.3 Those conditions, guarantees and/or warranties implied by legislation or common law and incapable in law of exclusion are deemed to be expressly incorporated herein.
- 11.4 Except as otherwise expressly provided in the Conditions, the Seller shall not be bound by or subject to any condition, warranty, obligation or liability of any kind whatsoever in connection with these Conditions or in connection with the order, supply, installation and use of the Goods whether such condition, warranty, obligation or liability is implied or imposed by virtue of any applicable statute, statutory rule or regulation or under general law and whether arising out of negligence on the part of the Seller, its servants or agents or otherwise AND the Buyer hereby indemnifies and will keep indemnified the Seller against all and any such actions, demands, obligations and liabilities.
- 11.5 Where any condition, guarantee and/or warranty is implied in these Conditions pursuant to any legislation or common law and cannot lawfully be excluded from the Conditions then to the extent to which any such condition or warranty cannot be so excluded and the Seller adjudged in law to be liable, then the liability of the Seller shall be limited solely to pecuniary damages equivalent to 0.5 percent of the gross Contract price of the Goods or services which is the subject of the order or Conditions.
- 11.6 Intellectual Property Indemnity - In ordering equipment, apparatus or Goods to his/its own design the Buyer warrants that in the making of them the Seller will not be liable for any infringement of Patent, Trade Marks, Registered Designs, Copyright or the like and indemnifies and will continue to indemnify the Seller against any action, loss or damage that may be brought against or suffered by the Seller for such manufacture.
- 11.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
 - 11.7.1 Act of God, explosion, flood, tempest, fire or accident;
 - 11.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 11.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 11.7.4 import or export regulations or embargoes;
 - 11.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 11.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; or
 - 11.7.7 power failure or breakdown in machinery.

12. Insolvency of Buyer

- 12.1 This clause applies if:-
- 12.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
 - 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;
 - 12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 12.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 13. Export Terms**
- 13.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provision of Incoterms and these Conditions, the latter shall prevail.
- 13.2 Where the Goods are supplied for export from Singapore, the provisions in this clause shall (subject to any special terms agreed to in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 13.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act (Cap. 393 of the Statutes of the Republic of Singapore).
- 13.5 The Buyer shall be responsible for arranging for inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 13.6 Unless otherwise agreed, payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in Singapore acceptable to the Seller.
- 14. General**
- 14.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other party or business associate, provided that any act or omission of any such other party or business associate shall be deemed to be the act or omission of the Seller.
- 14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at

- the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 14.5 The Buyer irrevocably and unconditionally undertakes to indemnify the Seller against all losses, damages, liabilities, claims and expenses which the Seller may sustain or incur as a result of this Contract including but not limited to all legal costs as between solicitors and clients and all other costs and disbursements incurred for or in connection with demanding and enforcing payment of all monies due and payable under this Contract.
- 14.6 The Contract shall be governed by the Laws of the Republic of Singapore and the parties shall submit to the exclusive jurisdiction of the Singapore courts.
- 14.7 Unless expressly provided otherwise, no term of this Contract shall purport to confer any benefit on a third party or shall be enforceable under the Contracts (Rights of Third Parties) Act (Cap. 53B) by a third party.