

# Broadland Catering Equipment Ltd Terms and Conditions of Sale, Supply or Repair

## 1. General Definitions and Application

The following words referred to in these Conditions shall have the following meaning: "the Company" refers to Broadland Catering Equipment Limited"; "the Purchaser" refers to the party entering into a contract of supply with the Company, "the Customer" refers to the party entering into an agreement for repairs and maintenance with the Company, "the Goods" refers to all goods (including any installation of the goods or any parts for them) the subject of the contract between the Company and the Purchaser, "the Contract" refers to the contract between the Company and the Purchaser for the supply of the Goods, "the Equipment" refers to all goods the subject of the repair and maintenance agreement with the Company, "the Agreement" refers to the repair and maintenance contract between the Company and the Customer. The Conditions of the Section entitled "TERMS AND CONDITIONS OF SUPPLY" apply to all contracts for the supply of Goods entered into by the Company. The Conditions of the Section entitled "TERMS AND CONDITIONS FOR REPAIR AND MAINTENANCE AGREEMENTS" apply (in addition to the "TERMS AND CONDITIONS OF SUPPLY") to all repair and maintenance agreements entered into by the Company. In the event of any discrepancy arising between the legal interpretation and applicability of the "TERMS AND CONDITIONS OF SUPPLY" and the conditions of the section entitled "TERMS AND CONDITIONS FOR REPAIR AND MAINTENANCE AGREEMENTS" then the conditions contained within the latter section shall prevail.

## Terms and Conditions of Supply

### 2. General

- 2.1. All orders for goods and services, whether verbal or written, are accepted subject to these Terms and Conditions of Supply and / or to the Terms of Conditions for Repair and Maintenance Agreements below, subject also to any special conditions detailed in any written quotation.
- 2.2. These conditions supersede any and all prior representations, agreements, statements and understandings whether oral or in writing.
- 2.3. Any typographical or clerical or other error or omission in the sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.4. The giving or sending to the Company of an order or the acceptance of the Company's quotation constitutes acceptance of all these Conditions by the Purchaser and/or Customer.
- 2.5. In some circumstances, an estimate may be provided instead of a quotation. This information will be for budgeting purposes only and will not be legally binding. The Company accepts no liability for any claims arising from inaccuracies in the estimate.
- 2.6. The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit any premises of the customer.

### 3. Orders and Specifications

- 3.1. The Purchaser shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2. Except in the event that the Company has surveyed the premises, the Company accepts no liability for ensuring goods ordered are suitable for purpose and or there is sufficient access, space and services to allow for safe delivery, installation and operation.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Purchaser) or the Purchaser's order (if accepted by the Company).
- 3.4. Contracts are made subject to the manufacturer's right to vary the specification and design of Goods. Any request by the Purchaser for additions or alterations to be made to the manufacturer's specification shall only be accepted by the Company subject to the Purchaser indemnifying the Company for any extra cost incurred as a result of such additions or alterations being made.
- 3.5. No Contract or Agreement may be cancelled by the Purchaser/Customer except with the agreement in writing of the Company and on terms that the Purchaser / Customer shall indemnify the Company 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 Company as a result of cancellation.
- 3.6. Verbal instructions from the Purchaser and / or Customer will be regarded as an order and will therefore be subject to these Terms and Conditions.

### 4. Price of the Goods

- 4.1. The price of the Goods shall be the Company's quoted price. All prices quoted are valid for 30 days only (unless otherwise specified on the quotation) or until earlier acceptance by the Purchaser, after which time they may be altered by the Company without giving notice to the Purchaser.
- 4.2. The Company reserves the right, by giving notice to the Purchaser at any time before delivery, to vary the price of the Goods to reflect any variations in the cost to the Company which are due to any factor beyond the control of the Company, any change in delivery dates, quantities or

specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser not given at or prior to the Contract being made or failure of the Purchaser to give the Company adequate information or instructions.

- 4.3 The Company reserves the right, without giving notice, to make additional charges on the invoice for any additional work necessary to complete the contract, or any aborted attempts at installation, should the customer fail to provide, or prepare, or give access to, the site for installation as defined in 6.3.1., to include any subsequential losses or costs.
- 4.4. The price of the Goods is exclusive of any applicable Value Added Tax or any other applicable tax which may become payable thereon which the Purchaser shall be additionally liable to pay the Company.
- 4.5 Unless otherwise specified, prices are based on normal working hours, services provided by others within 1m and sufficient access to allow removal / installation without disassembly of any appliances or removal of any doors.

### 5. The Terms of Payment

- 5.1. Subject to 5.3 hereof or any special terms agreed in writing between the Purchaser and the Company, the Company shall be entitled to invoice the Purchaser for the price of the Goods at any time prior to, on or after delivery of the Goods or on the issuing of a pro-forma invoice by the Company to the Purchaser.
- 5.2 Other than agreed in writing between the Purchaser and the Company, the Purchaser shall pay the price of the goods within 14 days of the date of the Company's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Purchaser. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3. The Company may agree with the Purchaser for payment of the price of the Goods to be made in stages, which will be defined in the quotation and / or acknowledgement of order. The time of payment of the various stages of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. The provisions contained in 5.2. hereof shall not apply to any such agreements referred to herein.
- 5.4. If the Purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
  - 5.4.1 Cancel the Contract,
  - 5.4.2 Appropriate any payment made by the Purchaser to such of the Goods (or the goods supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Purchaser), and
  - 5.4.3 Charge the Purchaser interest, before any judgment, on the amount unpaid, at the rate of 4% per annum above Natwest Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). In the event of any judgement, interest will be charged at the prevailing rate defined by the Court Service.

### 6. Delivery and Installation

- 6.1 Any dates quoted for delivery and installation of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery and installation shall not be of the essence. The Goods may be delivered and installed by the Company in advance of the quoted delivery / installation dates upon giving reasonable notice to the Purchaser
- 6.2 The Company may, at its discretion, deliver and install the Goods by instalments, and each such delivery and installation shall be deemed to be the subject of a separate contract. No default or failure by the Company in respect of any one or more instalment shall vitiate the Contract in respect of Goods previously delivered and installed or Goods which still remain to be delivered and installed.
- 6.3.1. Notwithstanding dates quoted for delivery and installation of the Goods being approximate only in accordance with 6.1 hereof, if a fixed date is agreed for installation of the Goods the Purchaser must ensure the premises in which the Goods are to be installed are in such a condition that installation may take place on such fixed date and time shall be of the essence. In default the Purchaser shall indemnify the Company for all extra costs incurred by the Company.
- 6.3.2 The Company shall endeavour to comply with such fixed date but shall not be liable for any delay in doing so if the delay was due to any cause beyond the Company's reasonable control.

### 7. Title and Risk

- 7.1 For the purpose of section 2 of the Supply of Goods and Services Act 1982 and section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred
- 7.2 Risk in the Goods shall pass to the Purchaser when the Goods are delivered to, or collected by, the Purchaser, or its agent.
- 7.3 Notwithstanding risk in the Goods passing in accordance with 7.2 hereof title in the Goods shall remain with the Company and shall not pass to the Purchaser until payment in full is received by the Company for the Goods.

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7.4 Before title has passed to the Purchaser under the terms of 7.3 and without prejudice to any of its other rights, the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party by its servants or agents to repossess the Goods.

7.5 Until payments due under all contracts between the Purchaser and the Company have been made in full the Purchaser shall hold upon trust for the Company the Goods and in the event of the sale of the Goods by the Purchaser he shall hold the proceeds of such sale on trust for the Company in a separate bank account opened by the Purchaser for this purpose. The Company shall be entitled to trace all such proceeds of sale received by the Purchaser through any bank or other account maintained by the Purchaser. In the event of sale of the Goods by the Purchaser in the ordinary course of his business the Purchaser shall assign its rights to recover the selling price from the third parties concerned to the Company if required to do so in writing by the Company.

7.6 As the risk in the goods shall pass to the Purchaser as soon as the Goods are delivered to, or collected by, him or to his agent or order and pending disposal the Purchaser shall keep the Goods insured in the amount of the price at which the Goods are sold to the Purchaser against all insurable risks. If the Goods or any part of them are destroyed by an insured risk prior to the same being paid for by the Purchaser, the Purchaser shall receive the proceeds of any such insurance as trustee for the Company.

### 8. Force Majeure

8.1 The Company shall not be responsible for delay in delivery of the Goods or any part thereof occasioned by any Act of God action by any Government, strike, lockout, combination of workmen, riot or civil commotion, breakdown of machinery, power failure fire loss and/or detention at sea or any other contingency beyond its control. Should any of the Goods be rendered unfit for delivery by reason of any of the above acts or events, the Contract so far as it relates to those Goods shall be deemed to be discharged.

### 9. Insolvency

9.1 If the Purchaser has a Receiver appointed of any of his property or business undertaking or being an individual trader is deemed insolvent or is adjudicated bankrupt or makes any composition or scheme of arrangement with his creditors or being a body corporate has a petition for its winding-up presented against it or convenes, calls or holds a meeting for the purpose of going into liquidation (other than for the purpose of reconstruction or amalgamation whilst solvent) or being a partnership any of the aforementioned events occurs with respect to the partnership or to any partner therein or the partnership is dissolved then the full or full remaining price of any of the Goods delivered shall be immediately payable notwithstanding any previous arrangements to the contrary and the Company shall have the right without prejudice to any other rights and remedies available to it, to cancel and/or suspend any further deliveries. If the Purchaser fails to make any payment as due or (being an individual) dies, the rights conferred on the Company by this condition shall apply provided that within 28 days after becoming aware of the relevant occurrence the Company gives the Purchaser or his representative written notification of the Company's intention to exercise all or any of such rights.

### 10. Notification of Claims

10.1 Any alleged defect in the Goods shall be notified by the Purchaser to the Company within 24 hours of the delivery and installation (if any) of the Goods or, in the case of any defect of the goods which is not reasonably apparent on inspection, within 24 hours days of the date upon which the defect might reasonably have been expected to come or actually did come to the notice of the Purchaser whichever be the sooner.

10.2 Any claim made under this condition must be in writing and contain full details of the claim.

10.3 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition.

10.4 Compliance by the Purchaser with all the provisions of this condition 10 is a condition precedent to any liability of the Company in respect of the claim or defect alleged.

10.5 None of the claims detailed in section 10 exonerate the Purchaser from any obligations defined elsewhere in these terms and conditions, including, but not limited to, sections 5 and 7 herein.

10.6 Rectification work resulting from claims shall only be carried out by the Company or its representative, unless agreed in writing by the Company.

### 11. Extent of Liability

11.1 Except in accordance with this condition 11 the Company shall have no liability to the Purchaser for any loss or damage of any nature arising from any breach of any express or implied warranty or condition or of any negligence or breach of statutory duty on the part of the Company or arising in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract.

11.2 The Company shall at its option replace with similar goods, repair any defective goods, allow the Purchaser credit for their invoice value or to the extent that such Goods are not of the Company's own manufacture assign

to the Purchaser (so far as the Company is able to do) any warranties given by the manufacturer of the Goods to the Company.

11.3 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set off or other claim shall be made by the Purchaser against or in respect of such other or other parts of the Goods.

11.4 The Company shall not be liable to the Purchaser 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

11.5 In no circumstances (save as prescribed in 11.11) shall the liability of the Company to the Purchaser exceed the invoice value of the Goods.

11.6 Unless otherwise specified, Goods will be covered by the relevant manufacturer's warranty and will be subject to their terms and conditions as appropriate.

11.7 The Company will accept no liability whatsoever for any defect or malfunction which, in the Company's opinion has arisen as a result of work on the services external to the Equipment or transportation or relocation of the Equipment not performed by or on behalf of the Company or any error or omission relating to the operation, cleaning or routine maintenance of the Equipment or any modification, adjustment or repair to the Equipment made by a third party without the written consent of the Company or the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure of fluctuation of electrical power, air conditioning, humidity control or other environmental controls, or any other cause (except fair wear and tear) which is not due to the neglect or default of the Company.

11.8 If on investigation the Company reasonably determines that any defect in or malfunction following repair of the Equipment is the result of any of the matters referred to in 11.7 hereof, or there is no defect evident, the Customer shall be liable for all costs incurred by the Company in investigating the same and / or determining its cause.

11.9 Notwithstanding any other provision hereof no liability of the Company for death or personal injury resulting from the Company's negligence is excluded or limited.

11.10 It is the Customer's absolute responsibility to ensure compliance with all planning, health and safety, building regulations, environmental health, electrical safety, fire and any other regulations relevant to their premises and business.

### 12. Law and Construction

12.1 The Contract shall be governed by English Law.

12.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

12.3 If any part of these Conditions be found to be unreasonable, invalid or unlawful under any enactment or rule of law pertaining thereto the Court or other competent tribunal shall have the power to strike out or override that part whether it be an entire condition or conditions or some part or parts thereof and enforce these Conditions as if the unreasonable, invalid or unlawful part or parts aforesaid had not been included.

### Terms and Conditions for Repair and Maintenance Agreements

#### 13. Service levels

13.1 While the Company will make every endeavour to attend breakdowns as quickly as possible, time shall not be of the essence to the Agreement and the Company will not accept any liability whatsoever for any claims arising from delays in rectifying defects.

13.2 The Company reserves the right absolutely to prioritise calls according to severity / safety issues.

#### 14 Pricing

14.1 Unless otherwise specified in writing, or on any 'menu' pricing schedule, all repairs and servicing will be priced according to the Company's prevailing labour rates in force and manufacturer's list prices for parts and materials.

14.2 Labour will be charged to include travelling time to and from site, plus any time on site, including the completion of any relevant paperwork.

14.3 Written confirmation of orders and pricing will not be provided unless requested.

#### 15 Title and risk

15.1 All spare parts fitted will be treated as "Goods" and title and risk in such will be as defined in section 7 herein.

#### 16 Warranty

16.1 Unless otherwise specified on the invoice, all repairs under Agreements will be subject to a 3 month warranty, subject to any exclusions detailed in section 11 and 16.2 herein.

16.2 The warranty supplied by the Company under the Agreement shall not apply to any design defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture.