

# Michael Linnell & Co Limited

## Terms and Conditions

In these Conditions "the Company" means Michael Linnell & Co Limited incorporating Linnell's Mailroom Supplies "the goods" means any item of whatsoever nature which is to be sold by the Company. "the Customer" means the person who buys or has agreed to buy the goods.

### 1. ACCEPTANCE OF ORDERS

- (1) Company contracts for the supply of goods and/or services only subject to these terms and conditions and all terms and conditions in the Customer's order or enquiries inconsistent therewith shall be of no effect.

The placing of an order following a quotation given by the Company shall not be binding on the Company unless and until accepted by the Company in writing.

- (2) The terms contained herein shall constitute the entire agreement between the Company and the customer and any modification to these conditions will be binding only if it is evidenced in writing signed by a director of the Company on behalf of the Company and such evidence contains a specific reference to these conditions being modified.
- (3) In no circumstances shall the Customer cancel a contract to which these Conditions apply without the Customer's written agreement, if such agreement is given the Customer will indemnify the Company on demand against all losses (including loss of profit) suffered by the Company arising out of such cancellation.
- (4) No contract governed by these Conditions shall be a sale by sample unless the Company expressly agrees in writing.
- (5) All specifications, illustrations, drawings and diagrams in the Company's catalogue, trade literature and other published matter are of a generally informative nature and approximate only and none of these form part of any contract or give rise to any independent or collateral liability of whatsoever nature on the part of the Company and, without prejudice to the generality of the foregoing, the Company shall be under no liability whatsoever for inaccuracies in dimensions or measurements quoted or made by it.

### 2. ESTIMATES AND PRICES

1. Subject to sub-paragraph (2) hereof and unless otherwise stated by the Company in writing the prices estimated or quoted by the Company are inclusive of basic packaging but are exclusive of freight and insurance charges, charges for delivery, VAT and other applicable taxes duties or levies of any kind whatsoever all of which are payable in addition by the Customer. The costs of any special packaging required by the Customer shall be payable by the Customer.
2. Unless otherwise stated by the Company in writing, prices in excess of the Company's minimum order requirement of £50 (or such other amount as may from time to time prevail) estimated or quoted by the Company shall be inclusive of carriage by a road haulier of the Company's choice in addition to basic packaging. Such estimated or quoted prices are not inclusive of carriage by any other means, including (without limitation to the generality of the foregoing) mail, courier, rail or air.
- (3) Unless otherwise stated in writing, prices quoted are applicable only to the specific order in respect of which such prices are estimated or quoted and are subject to change in respect of orders made thereafter.

### 3. PRICE VARIATION

Prices are based on, inter alia, the cost of materials, labour, transport, import duties and levies, currency exchange rates and statutory obligations ruling at the date of the Company's acceptance of the Customer's order and if before delivery there occurs any increase howsoever arising in the costs to the Company of supplying the goods, including (without limitation) any of the above matters, the Company shall be entitled to adjust the price for the goods by a reasonable amount to take account of such increases.

### 4. PAYMENT

- (1) Subject to sub-paragraph (4) hereof and Condition 5(1) payment shall be made net within 30 days of the date of the invoice relating to the goods and the time of payment shall be of the essence of any contract to which these Conditions apply. The customer shall not be entitled to make deduction from any payment due to the Company in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by the Company.
- (2) Without prejudice to any other rights, failure to pay the price or part thereof or other moneys payable by the Customer will also entitle the Company at the Company's sole discretion either to refuse to make delivery of any further consignment of any goods agreed to be supplied or to cancel any contract to which these Conditions apply either in whole or in part by notice in writing to the Customer and without incurring any liability to the Customer for any loss caused by such delay or cancellation.

- (3) If the payment of the price or any part thereof and of all other sums payable by the Customer is not made on the due date the Company, without prejudice to its other rights hereunder, shall be entitled to charge in addition to any moneys due hereunder interest on the outstanding amount at the rate of 3 per cent per month or part thereof calculated on a daily basis until payment is made.

## **5. TRANSFER OF PROPERTY**

- (1) The goods shall remain the sole and absolute property of the Company as legal and beneficial owner and the Company reserves the right to dispose of the goods until such time as payment in full for all the goods the subject of a contract to which these Conditions apply together with the full price of any other goods the subject of any other contract with the Company has been received by the Company or until such time as the Customer sells the goods (in accordance with sub-paragraph (3) hereof) to its customers by way of bona fide sale at full market value, whichever shall first occur. If such payment is overdue in whole or in part the Company may (without prejudice to any of its other rights) recover or resell the goods or any of them and may enter upon the Customer's premises or such other premises where they are or where they are reasonably thought to be stored for the purpose of repossessing the same. Such payment shall become due immediately upon the commencement of any act or proceedings in which the Customer's insolvency is involved.
- (2) Until such time as the Customer becomes the owner of the goods, the Customer will store them and will procure that they are stored separately from its own goods or those of any other person and in a manner that makes them readily identifiable as the Company's goods.
- (3) Subject to the terms hereof, the Customer is licensed by the Company to agree to sell and to sell on the goods or any of them subject to the express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies, or paid into any overdrawn bank account, and shall be at all times identifiable as the Company's monies.
- (4) The company may maintain an action for the price of the goods notwithstanding the property in them may not have passed to the Customer.
- (5) So long as the property in the goods remain in the Company the Customer shall notify the Company of any circumstances that might give rise to the taking (whether lawful or otherwise) of the goods or of the actual or attempted taking thereof.
- (6) If the Company enforces any of its rights under this Condition and if the proceeds received by it as a result of such enforcement exceeds an amount equal to the sum of all debts owed by the Customer to the Company and all costs and expenses incurred or suffered by the Company in enforcing such rights or realising the proceeds than the Company will account to the Customer out of any excess.

## **6. RISK AND INSURANCE**

- (1) Subject as hereinafter provided the goods are at the customer's risk (and the Customer shall be under a duty to insure the goods to their full value) from the occurrence of the first point in time of any of the following events: -
  - (2) The passing of property to the Customer as provided for in Condition 5 of these terms and conditions
  - (3) The physical delivery of the goods to the Customer at the Company's premises
  - (4) Independent carrier for the purpose of transmission to the Customer or his nominee, or
  - (5) The physical delivery of the goods to the Customer's place-of-business by the Company.
- (6) The Company will be under no obligation to effect insurance of the goods where the risk has passed to the customer
- (7) Whilst the goods are in the possession of the Customer and before property in the goods has passed to the Customer, the Customer shall keep the goods in the same condition as that in which they were delivered and shall make good any damage or deterioration.

## **7. DELIVERY**

- (1) Time of delivery shall not be of the essence. Orders will be delivered as soon as reasonably practicable and the Company reserves the right to deliver by instalments in such quantities as the Company thinks fit.
- (2) The Company shall endeavour to inform the Customer (or his nominated agent) as soon as the goods are ready for collection or delivery.

- (3) Where delivery of the goods is made in instalments each instalment shall be construed as constituting a separate contract to which all the provisions of these terms and conditions shall (with any necessary alterations) apply.
- (4) In the event of any failure to make delivery or delay in delivery the Customer shall have no claim whatsoever against the Company for any indirect or consequential loss or damage of any kind.
- (5) Without prejudice to any rights of the Company hereunder, if the Customer shall fail to give on or before the time the Company is ready to deliver the goods all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities for forwarding the goods or shall otherwise cause or request delay, the Customer shall pay to the Company all storage and other costs of whatever nature incurred or arising from such delay.
- (6) Unless otherwise stated in writing by the Company deviations in quantity of goods delivered from those stated in any contract to which these Conditions apply shall not give rise to a right to reject on the part of the Customer and the Customer shall have no right to claim for damages for breach of contract but the Customer will only be obliged to pay at the contract rate for the quantity of the goods delivered but only to the extent that the deviation in the quantity of goods delivered is not more than 10 per cent (plus or minus) of the quantity of goods stated in the contract to which these Conditions apply.

## 8 LIMITATION OF LIABILITY

- (1) The sole liability of the Company in respect of any defect in or failure of any goods or services supplied or for any shortage in quantity of goods delivered or for any loss injury damage attributable directly or indirectly thereto (other than in respect of death or personal injury) is limited to: -
- (2) Making good by replacement or (at the option of the Company)
- (3) Repairing defects or failures, which under proper use appear therein.

In addition the Company must be reasonably satisfied that such defects or failure arose solely from the faulty design of the goods defective materials used or workmanship provided however that no liability shall attach to the Company unless it is notified promptly in writing of the alleged defect failure or shortage and if the Company shall so require the defective goods or part thereof are promptly returned to the Company carriage paid.

- (4) If without the prior consent of the Company repairs or alterations are made to the goods the Company shall be under no liability in respect of the goods and no allowance shall be made for any repairs or alterations so made.
- (5) All, if any, statements, recommendations, measurements, dimensions and advice given or made (whether before or after any contract to which these Conditions apply) by the Company or the Company's servants or agents to the Customer or its servants or agents as to any matter relating to the goods are given without any liability whatsoever on the part of the Company and the Company hereby represents and warrants to the Customer that no representation has been made to the Company by or on behalf of the Customer before entering into any contract to which these Conditions apply and that no representation made to the Company by or on behalf of the Customer before entering into such contract has in any way induced the Company to enter into such contract and the Customer makes and gives the like representations and warranties (mutulie mutandie) to the Company as makes and gives to the Customers as above.
- (6) Except as provided in sub-paragraphs (1) and (2) above all representations, guarantees, undertakings, conditions or warranties, expressed or implied, statutory or otherwise in relation to the goods are hereby expressly excluded **PROVIDED ALWAYS** that in the event of a consumer sale none of the statutory rights of the Customer are excluded by the Condition and the statutory rights of the Purchaser in the case of a consumer sale shall remain in full force and effect.
- (7) Without prejudice to the foregoing, the Company shall in no Circumstances be liable: -
- (8) for any indirect or consequential loss (including without limitation loss of production, loss of profit or liability to third parties) suffered or incurred by the Customer or others
- (9) for any loss or damage in excess of the contract price for the goods or part thereof in respect of which a claim is made.

## 9. INDEMNITY

The Customer shall comply with all instructions of the Company in relation to the use of the goods, and notwithstanding such compliance but subject to Condition 8 the Customer shall keep the Company fully and effectually indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature (other than in respect of death or personal injury), including without prejudice to the generality of the foregoing claims for damage to property and consequential loss (including loss of profit ) which may be made against the Company or which the Company may sustain, pay or incur arising out of or in connection with the sale, fitting, installation or use of the goods.

## 10. FORCE MAJEURE

If the Company is prevented from fulfilling any order within a reasonable time by reason of force majeure or any cause beyond its reasonable control including without prejudice to the generality of the foregoing war, threat of war, riots, civil commotion, act of God, government, terrorist activities, strikes, lockouts, industrial action, accident, technical problems with transportation, natural disaster, storm, flood, fire, earthquake, delay in delivery to the Company of any goods or materials or interruption of transport it shall be under no liability to the Customer and shall be entitled at its option (to be notified in writing to the Customer) either to cancel any contract to which these Conditions apply or without any liability to extend the time or times for delivery or otherwise performing such contract

by a period at least equivalent to that during which such delivery or performance has been prevented by any of the restrictions hereinbefore referred to.

#### **11. DEFAULT AND CUSTOMERS INSOLVENCY**

If there is any default in or breach of any of the Customer's obligations hereunder or in any payments due under any contract of sale to which these Conditions apply or if any distress, execution or other legal process is levied upon the Customer's property or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order is presented or made against the Customer or if a company any resolution or petition to wind it up shall be passed or presented or a receiver of all or any of its assets shall be appointed then (without prejudice to other remedies) in any such case the Company may determine such contract or cancel any outstanding delivery or stop any products in transit and notwithstanding any other provisions, payment in respect of any delivery already made shall be immediately due.

#### **12. RETURN OF GOODS**

Without prejudice to any of the provisions of these Conditions (with the exception of paragraph (1) of Condition b) and without imposing any obligation (legal or otherwise) on the Company so to do, if the Company, in its absolute and unlettered discretion, is prepared to permit the Customer to return goods, a handling charge of 20 per cent (or such other percentage as may prevail from time to time) of the net price in respect of such goods shall be payable upon the return of such goods.

#### **13. REMEDIES**

Termination of any contract to which the Conditions apply for whatever cause shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum of money owing or to become owing by the other.

#### **14. ASSIGNMENT**

The Customer shall not assign or transfer or purport to assign or transfer any contract to which these terms and conditions apply or the benefit thereof to any person whatsoever.

#### **15. LAW**

Any contract to which these apply shall be governed by and construed in accordance with the laws of England.

#### **16. HEADINGS**

The headings and punctuation shall not affect the meaning, interpretation or construction of these Conditions.

#### **17. CONSUMER SALES**

Nothing in these terms and conditions affects the statutory rights of any person dealing with the Company as a consumer.