

# Wholesale

## Terms & Conditions for Sale of Goods 2018

### 1. DEFINITIONS

- a. In this agreement (the "Agreement") the terms and conditions (the "Terms and Conditions") shall include the following words defined as:
  - i. "Goods" means the articles to be supplied to the Buyer by the Seller;
  - ii. "Seller" means Malulu Ltd, Lintot House, 20 Fairbank Road, Southwater, Horsham, West Sussex, UK – company number 07003490;
  - iii. "Buyer" means the organisation or person who buys the Goods;
  - iv. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.

### 2. GENERAL

- a. These Terms and Conditions of this Agreement shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- b. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### 3. ORDER PLACEMENT

- a. The Buyer must place an order through one of the following channels:
  - i. by the Seller's wholesale ordering system on the Seller's website;
  - ii. by written order to the Seller's email address;
  - iii. by telephone to the Seller's contact number.
- b. The Seller shall respond by written acknowledgment of the order by email to the address as provided by the Buyer.
- c. The Seller's acceptance of the Buyer's order shall be effective on payment of Goods.
- d. The minimum net value of each order is £250.00 plus delivery costs, or as determined from time to time by the Seller.
- e. The period between order placement and delivery time may vary between 5 (five) working days and 10 (ten) calendar weeks, depending upon stock availability. The Seller will confirm delivery date in writing with the Buyer following order placement. In the event stock ordered is not available for delivery within 5 working days, the Seller

will notify the Buyer in writing within 2 (two) working days, and give the Buyer the option to amend their order.

#### **4. PRICE AND PAYMENT**

- a. The price shall be the Seller's quoted price as set by the Seller and be paid on placing of an order.
- b. For consignments ordered within the UK, the price includes the cost of delivery.
- c. For consignments ordered outside of the UK, the price excludes the cost of delivery, and will be charge according to the weight, dimensions and destination of the consignment. The Seller will notify the Buyer of delivery costs once the order has been placed.
- d. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
- e. Where credit is offered payment of the price and any other applicable costs shall be due within 14 days of the date of the sales invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered, payment will be required before release of Goods by the Seller.
- f. The Seller shall be entitled to charge interest on overdue sale invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2% (two per cent) per annum above the base rate of the Barclays Bank Plc.
- g. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - i. require payment in advance of delivery in relation to any Goods not previously delivered;
  - ii. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery.

#### **5. DESCRIPTION**

- a. Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

#### **6. SALES AND DISTRIBUTION BY BUYER**

- a. The price of the Goods sold by the Buyer to a third party shall not be less than the Seller's quoted price as set by the Seller.
- b. The Buyer shall only sell the Goods at locations agreed in writing by the Seller and shall not sell Goods on the Internet except with prior written consent from the Seller.

## **7. SAMPLE**

- a. Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

## **8. DELIVERY**

- a. The Seller shall not be obliged to make delivery until full payment has been made in respect of any outstanding accounts on any other contracts between the parties hereto.
- b. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- c. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- d. Any damages, shortages, over deliveries and duplicated orders should be reported to the Seller within 7 (seven) working days of signed receipt to enable replacement or refund.

## **9. RISK**

- a. Risk in the Goods shall pass to the Buyer upon receipt of the Goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

## **10. TITLE**

- a. Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

## **11. RETURN OF UNUSED GOODS**

- a. All Goods are sold on a firm sale basis, i.e. the Seller will not take back any Goods not required or sold by the Buyer, unless otherwise agreed in writing, in which case the following terms apply.
- b. The Buyer will:
  - i. examine products carefully within 2 (two) working days of taking delivery;
  - ii. notify the Seller in writing and with photographic evidence within 7 (seven) working days of taking delivery of any damage to Goods revealed by such examination (and not caused post-delivery), of any error in quantity or description of Goods;

- iii. notify the Seller in writing within 7 (seven) working days from the date of delivery if Goods subject to such Sales Invoice have not been received. Failure to make any notification in accordance with paragraphs 11.b.i and 11.b.ii of this condition, which such examination should have enabled the Buyer to make, shall constitute waiver by the Buyer of all claims based on or relating to facts which such examination should have revealed or for non-delivery.
- iv. The Buyer acknowledges that the Goods may be end of line ranges and that the Seller may not be able to supply the full quantity of Goods as specified in the contract. Short delivery shall not entitle the Buyer to cancel the contract or to treat the Seller as being in breach of contract, but the Buyer shall only be liable to pay for Goods delivered.
- c. Any returns must be authorised by the Seller before any credit will be given.
- d. Where the Seller agrees to accept the return of Goods that are not damaged the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. The Seller will not be obliged to accept any Goods that are damaged in any way. The Seller will only accept returns that were sold by the Seller to the Buyer.
- e. Credit of amounts due or paid in will only be given for Goods that are in saleable condition.

## **12. LIMITATION OF LIABILITY**

- a. The Seller shall not be liable for any all loss or damage suffered by the Buyer in excess of the contract price.
- b. Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

## **13. INTELLECTUAL PROPERTY RIGHTS**

- a. All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
- b. The Buyer may not reproduce, publish, transmit, distribute, display, modify, sell, or exploit in anyway, in whole or in part, any contents of the Seller's website, or any related software, catalogue, advertising or images for any purpose without the prior permission of Seller.

## **14. FORCE MAJEURE**

- a. The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable

control, including but not limited to acts of God, strikes, lock outs, accidents, war, terrorism, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

#### **15. RELATIONSHIP OF PARTIES**

- a. Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

#### **16. ASSIGNMENT AND SUB-CONTRACTING**

- a. The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

#### **17. WAIVER**

- a. The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

#### **18. SEVERABILITY**

- a. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

#### **19. GOVERNING LAW AND JURISDICTION**

- a. This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.