

## Tower Supplies - Terms of Trading (Business and Consumer) [02/2019]

### 1. APPLICABILITY AND GENERAL TERMS

- 1.1 These terms and conditions of business shall govern any contract between you and us for the provision of Goods and Services, as defined below to the exclusion of any other terms, including those previously issued by us or those which you may otherwise impose or seek to impose or which are implied by trade, custom, practice or course of dealing, unless otherwise agreed in writing.
- 1.2 A contract between you and us will be formed:
- 1.2.1 following a request by you to us for the provision of the Services which request will be regarded as an offer for contract pursuant to these terms and which offer will be accepted by us at the earliest of our confirmation of such order or us commencing the provision of the Services; and/or
- 1.2.2 on an order being placed by you with us for the supply of Goods, which offer will be deemed accepted by us at the earliest of us issuing our order confirmation or any dispatch of any of the Goods.
- 1.3 If you are a Consumer, you have a legal right to cancel a contract for the provision of Goods and/or Services within a 14 day period, as more specifically set out in clauses 10 and 11.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:
- You:** The person, firm or company who purchases Goods and/or receives Services from us.
- We/Us:** Wyderington Ltd, Ashley & Pollock Ltd, Parley Chase Ltd, Jondan Ltd and John, Daniel and Jonathan Aris, as The Trustees of the Tower Trust, trading as Tower Supplies. Service address: 3 Yarrow Road, Poole, Dorset, BH12 4TS.
- Consumer:** Someone who buys Goods or Services for purposes which are outside his trade, business, craft or profession.
- Delivery:** As defined in clause 5.1.
- Goods:** Any items purchased from us by you, and all the Sold Equipment and Hired Equipment as defined below.
- Hired Equipment:** All the goods and equipment hired to you as set out in any purchase order form placed by you and accepted by us.
- Services:** All the cleaning, laundry, and hire services to be provided by us to you as defined in any order placed by you and accepted by us.
- Sold Equipment:** All the goods and equipment sold to you as set out in any purchase order form placed by you and accepted by us.

### 3. PROVISION OF SERVICES

- 3.1 You acknowledge and agree that for us to be able to provide the Services you shall:
- 3.1.1 co-operate with us as we may reasonably require;
- 3.1.2 promptly provide to us such information and documentation as we may reasonably require;
- 3.1.3 make available to us the facilities, resources and equipment as we may reasonably require from time-to-time;
- 3.1.4 provide us safe access to your premises to allow us to perform the Services; and
- 3.1.5 instruct your staff and agents to co-operate and assist us in particular with regard to the safe disposal of any Goods.
- 3.2 We may charge you for any additional reasonable costs and expenses incurred by us caused by your instructions, failure to provide instructions, or failure to comply with the above.
- 3.3 We warrant that we will use reasonable care and skill in performing the Services and to a standard which conforms to generally accepted industry standards and practices.
- 3.4 Whilst every reasonable effort is made for the prompt provision of the Services, time shall not be of the essence in respect of any Services and any time estimates given are for guidance only.
- 3.5 We expressly do not warrant that any result or objective shall be achieved, be achievable or be attained at all.

### 4. PRICE

- 4.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 4.2 Our quotations lapse after 30 days (unless otherwise stated).
- 4.3 The price quoted excludes the cost of delivery (unless otherwise stated) and our delivery charges will be payable in addition to the price.
- 4.4 The price for the Services will be charged on the time and materials basis at our hourly rates prevailing from time to time which are available from us on request.
- 4.5 Rates of tax and duties on the Goods will be those applying at the time of delivery.
- 4.6 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the Goods.

### 5. DELIVERY OF GOODS

- 5.1 Delivery shall take place at the location as agreed with and confirmed by us in writing ("Delivery")
- 5.2 All Delivery times quoted are estimates only.
- 5.3 If you accept Delivery of the Goods (which is deemed to have taken place upon signature on receipt of the Goods by you or any of your representatives) after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the Goods).
- 5.4 We may decline to deliver if:
- 5.4.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
- 5.4.2 the premises (or the access to them) are unsuitable for our vehicle.

### 6. RISK

- 6.1 The Goods are at your risk from the time they have been signed for on Delivery.
- 6.2 You must inspect the Goods or cause the Goods to be inspected on your behalf on Delivery. If any Goods are damaged or not delivered, you must write to tell us within 24 hours (not including weekends or public holidays) of Delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect any damaged Goods.

### 7. PAYMENT TERMS

- 7.1 If you are a Consumer, payment for Goods or Services and all applicable delivery charges must be made in advance by credit or debit card. If we are for any reason unable to provide the Goods or perform the Services, we will refund you in full for any payment you have made under this clause. This does not affect your statutory rights.
- The remainder of this clause will apply only if you are not a Consumer.**
- 7.2 You are to pay us in cash or in cleared funds on delivery, unless you have an approved credit account.
- 7.3 If you have an approved credit account, payment is due in cleared funds no later than 30 days after the date of our invoice unless otherwise agreed in writing.
- 7.4 If you fail to pay us in full on the due date we may:
- 7.4.1 suspend or cancel future deliveries;
- 7.4.2 cancel any discount offered to you;
- 7.4.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended);
- a. calculated (on a daily basis) from the date of our invoice until payment;
- b. before and after any judgment (unless a court orders otherwise);
- 7.4.4 claim from you reasonable debt recovery costs as per s.5A of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended);
- 7.5 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.
- 7.6 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 7.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (a lien).
- 7.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs, legal costs on a full

indemnity basis and the costs of instructing a debt collection agency to recover a debt due to us if any) following any breach by you of any of your obligations under these terms.

### 8. TITLE

- 8.1 We shall retain the title to all Hired Equipment and at no point will the title in the Hired Equipment pass to you.
- 8.2 We have your permission to enter any premises where the Hired Equipment may be stored:
- 8.2.1 at any time, to inspect them; and
- 8.2.2 in the event of non-payment of any sums owed in relation to the Hired Equipment, to remove them, using reasonable force if necessary.
- 8.3 You must inform us (in writing) immediately if you have any reason to believe you may become insolvent.
- 8.4 Title to the Goods shall not pass until full payment for the Goods has been received by us.
- 8.5 Despite our retention of title to the Goods, we have the right to take legal proceedings to recover the price of the Goods supplied should you not pay us by the due date.
- 8.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

### 9. WARRANTIES AND LIMITATION OF LIABILITY

- 9.1 If you are a Consumer, you have legal rights in relation to Goods that are faulty or not as described and we are under a legal duty to supply Goods that are in conformity with the contract. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.
- 9.2 We warrant that the Goods:
- 9.2.1 comply with their description on our quotation form, or if no quotation provided, as per our product details displayed on our website (subject to any typographical errors), or where not listed on our website, as per our latest brochure (subject to subsequent amendments or typographical errors); and
- 9.2.2 are free from material defect at the time of delivery (as long as you comply with clause 9.6).
- 9.3 Subject to clauses 9.1 and 9.13 (Consumer rights), we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the Goods or their fitness for any purpose.
- 9.4 The Supplier shall not be liable for failure of the Goods to comply with any warranty under clause 9.2 where the failure is caused by (a) fair wear and tear; (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party; (c) if you fail to operate or use the Goods in accordance with the user instructions; (d) any alteration or repair by you or by a third party who is not one of our authorised repairers; and (e) any specification provided by you.
- 9.5 To the extent that our contractual relationships with our suppliers and manufacturers permit, any warranty provided by the underlying manufacturer is passed on in full. Where applicable these vary by product and manufacturer. Full details are available on request.
- 9.6 If you believe that we have delivered Goods which are defective in material or workmanship, you must:
- 9.6.1 inform us (in writing), with full details, as soon as possible and in any event no later than 48 hours from Delivery (not including weekends or public holidays); and
- 9.6.2 allow us to investigate (we may need access to the premises where the Goods are located and product samples).
- 9.7 If the Goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 9.6) in full, we will (at our option) repair the Goods, replace the Goods or refund the price.
- 9.8 We are not liable for any other loss or damage arising from the contract or the supply of Services and/ or Goods or their use, even if we are negligent, including (as examples only);
- 9.8.1 direct financial loss, loss of profits or loss of use; and
- 9.8.2 indirect or consequential loss
- 9.9 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to £5M.
- 9.10 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the Goods and/ or Services.
- 9.11 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.
- 9.12 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.
- 9.13 If you are a Consumer, nothing in these terms restricts or limits our liability for breach of sections 12-15 of the Sale of Goods Act 1979.

### 10. CONSUMER CANCELLATION RIGHTS – GOODS

**This clause only applies if you are a Consumer.**

- 10.1 You have a legal right to cancel a contract for the supply of Goods which starts from the date your order is confirmed and ends at the relevant time as set out below ("Cancellation Period"):
- 10.1.1 Where you have placed a single order, the Cancellation Period ends 14 days after the date you received the Goods.
- 10.1.2 Where you have ordered multiple Goods which are delivered on separate days, the Cancellation Period ends 14 days after the day you receive the last item.
- 10.1.3 Where you have ordered a regular delivery of Goods over a set period, the Cancellation Period ends 14 days after the day you receive the first delivery.

10.2 If you wish to cancel a contract, you can let us know by submitting the cancellation form on our website [www.towersupplies.com](http://www.towersupplies.com). You can also cancel by emailing us at [customer.services@towersupplies.com](mailto:customer.services@towersupplies.com) or writing to us at 3 Yarrow Road, Poole, Dorset, BH12 4TS. Your cancellation is effective from the day you send us notice.

10.3 On cancellation, you must return the Goods to us without delay (unless we have otherwise agreed to collect them) and, in any event, the Goods must be returned to us no later than 14 days after you provide us with your notice to cancel. You are responsible for the cost of returning the Goods.

10.4 If you cancel your contract for the supply of Goods, we will:

10.4.1 refund you in full for the price you paid for the Goods. However, if you have done anything to reduce the value of the Goods then we may reduce your refund accordingly.

10.4.2 refund any Delivery costs you have paid, provided that the maximum refund we will provide is the costs of the least expensive method of Delivery.

10.5 Your cancellation right under this clause does not apply if we have supplied you with Goods that are made to your specifications or clearly personalised.

10.6 If you have returned the Goods, we will refund you within 14 days after the date we receive the Goods back from you or, if earlier, the date you supply evidence of having returned the Goods to us. If you have not received the Goods or we have offered to collect them from you, we will refund you within 14 days after the date we receive your cancellation notice.

10.7 Your statutory rights in respect of defective Goods are unaffected by this clause.

### 11. CONSUMER CANCELLATION RIGHTS – SERVICES

**This clause only applies if you are a Consumer.**

11.1 Before we begin to provide the Services, you have the right to cancel the provision of Services within 14 days after the date you placed the order ("14 day Cancellation Period") and you will be entitled to a refund of any advance payment you have made for the Services.

11.2 If we have started providing the Services and you cancel under clause 11.1, you are liable to pay us any costs we have reasonably incurred in starting to provide the Services up until the cancellation date and this charge will be deducted from any refund that is due to you under clause 11.1.

11.3 If you have completed the provision of Services within the 14 day Cancellation Period, you will no longer have the right to cancel the Services.

11.4 By placing each order, you instruct us to commence provision of the Services within the 14 Day Cancellation Period and you acknowledge that a) you may be liable for

pro rata Service provision costs incurred under clause 11.2 and b) you may lose your right to cancel in accordance with clause 11.3.

11.5 Cancellation notices under this clause must be sent using the method specified in clause 10.2. Any refunds due to you under this clause will be made within 14 days after the date you send us your cancellation notice.

### 12. RETURNS – GENERAL

**This clause only applies if you are not a Consumer**

12.1 Notwithstanding any other provision of this agreement, we may, at our option and by prior agreement, permit you to return goods upon the following conditions:

- 12.1.1 the goods are non-faulty;
- 12.1.2 the goods are standard, non-bespoke goods that are ordinarily held in stock;
- 12.1.3 the goods are returned undamaged, in original packaging, in a condition fit for resale;
- 12.1.4 you advise us of your intention to return the goods within 7 days of Delivery;
- 12.1.5 actual return of these goods is made within 14 days of Delivery;
- 12.1.6 you agree to pay us a handling/re-stocking fee equivalent to 15% of the price of the goods;
- 12.1.7 you comply fully with our returns procedures as in place at the time of return; and
- 12.1.8 you are responsible for the costs of returning the Goods and you agree to pay us return carriage charge where it is agreed we will collect the Goods.

### 13. SPECIFICATION

13.1 If we prepare the Goods in accordance with your specifications or instructions you must ensure that:

- 13.1.1 the specifications or instructions are accurate;
- 13.1.2 Goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and
- 13.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

13.2 We reserve the right;

- 13.2.1 to make any changes in the specifications of our Goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and
- 13.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.

### 14. TERMINATION

14.1 Unless you are a Consumer and you wish to cancel in accordance with clauses 10 or 11, you may not cancel any order unless we agree in writing.

14.2 We may suspend or cancel any order and/or terminate this agreement, by written notice if:

- 14.2.1 you fail to pay us any money when due (under the order or otherwise);
- 14.2.2 we have reasonable grounds to believe that you may become insolvent;
- 14.2.3 you fail to honour your obligations under these terms.

### 15. WAIVER AND VARIATIONS

15.1 No failure or delay by us in enforcing any of our rights shall constitute a waiver of any of our rights. No waiver shall be effective unless in writing signed by us.

15.2 No variation of these terms is binding unless:

- 15.2.1 made (or recorded) in writing;
- 15.2.2 signed on behalf of each party; and
- 15.2.3 expressly stating an intention to vary these terms.
- 15.3 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any terms you may have to the extent that they are inconsistent with our terms.

### 16. FORCE MAJEURE

16.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

16.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

### 17. GENERAL

17.1 If you are not a Consumer, you confirm that you have authority to bind any business on whose behalf you purchase Goods or Services.

17.2 If you are a Consumer, we only supply Goods and Services for domestic and private use. You agree not to use the product for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity

17.3 All contracts governed by these terms and conditions are subject to English law and the exclusive jurisdiction of the courts of England and Wales, but the parties agree to the enforcement of an English judgement in any jurisdiction.

17.4 If any of these terms are unenforceable as drafted:

- 17.4.1 it will not affect the enforceability of any other of these terms; and
- 17.4.2 if it would be enforceable if amended, it will be treated as so amended.

17.5 We may treat you as insolvent if:

- 17.5.1 you are unable to pay your debts as they fall due; or
- 17.5.2 you (or any item of your property) becomes the subject of:
- a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
- b. any application or proposal for any formal insolvency procedure; or
- c. any application, procedure or proposal overseas with similar effect or purpose.

17.6 Our website, brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.

17.7 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.

17.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

17.9 The only statements upon which you may rely in making the contract with us are those made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:

- 17.9.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
- 17.9.2 which expressly state that you may rely on them when entering into the contract.

17.10 We process personal information in accordance with our published Privacy Notices, and in compliance with current Data Protection legislation. Please note that this may include transfer of personal information under the legal basis of our legitimate interests to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.

17.11 We may monitor and record telephone calls for the following purposes:

- 17.11.1 Training;
- 17.11.2 quality control; and
- 17.11.3 to confirm verbal instructions.

17.12 We may, from time to time, make use of your information to send you marketing materials we feel are appropriate to you on the legal basis of our legitimate interests. Your details will at no time be distributed to third parties for marketing purposes, except with your prior written permission. If you wish to opt out of receiving marketing materials from us, please email us at [marketing@towersupplies.com](mailto:marketing@towersupplies.com).

17.13 You may not assign your rights.