

# TERMS OF BUSINESS (TRADE ONLY)

## 1. Definitions.

Company – Vink UK Limited and trading divisions thereof, "we" or "us"

Customer – any person or firm at whose request or on whose behalf the Company undertakes any business or provides Goods, advice information or services, or "you".

Goods – the goods to which any business undertaken with the Customer relates.

## 2. General.

All Goods supplied by the Company are sold only upon these conditions. The placing of an order for any such Goods, or the acceptance of our quotation or tender or delivery of the Goods, includes acceptance of these conditions. Unless expressly agreed by the Company in writing any other terms or conditions (including any which may be contained in your order) are excluded. For the avoidance of doubt, we will not modify these conditions to accord with any conditions your customers may have imposed on you or which have been accepted by you. Unless expressly incorporated in our quotation or tender, all descriptions, illustrations, drawings, dimensions, weights, measures, specifications, standards of performance or other descriptive matter or pre-contractual statements are approximate only and shall not form part of the contract. Our record of any order placed by you verbally shall be conclusive as to the type and quantity of product and the point and date of delivery.

## 3. Validity.

Unless previously withdrawn, our quotation is open for acceptance within the period stated therein or, when no period is stated, within 30 days after its date, and is subject to written confirmation by the Company at the time of acceptance. All Goods are offered subject to their being available upon receipt of order.

## 4. Delivery.

We reserve the right to choose the method of transport, to charge for deliveries and to charge you with all manufacturers' carriage charges for special items.

## 5. Delivery times.

Time for delivery shall not be of the essence of the contract unless previously agreed by the Company in writing. Any dates or times quoted for delivery are to date from receipt by the Company of your written order and all necessary information to enable the Company to put the work in hand. Such quoted delivery dates or times are approximate only as we are subject to the manufacturers' or suppliers' delivery promises which we pass on to you in good faith. For the avoidance of doubt such delivery dates or times given to you shall not create a contractual obligation to deliver on such date or time and accordingly no liability shall be accepted by the Company for any claim by you or any third party for direct or consequential loss or damage arising from delay in delivery.

## 6. Delay in delivery.

If we do not receive sufficient forwarding instructions within 14 days after notification that the Goods are ready for despatch, you will either take delivery or arrange for storage, otherwise we shall be entitled to arrange storage on your behalf and at your risk, either at our own works (making a charge of 2% of the invoice value of the Goods per month) or elsewhere. We shall be entitled to payment as if the Goods had been duly delivered. All charges for storage, insurance or demurrage will be payable by you.

## 7. Acceptance.

Unless you give the Company written notice within 7 days from the date of delivery that the Goods are not in conformity with the contract, you are deemed to have accepted the Goods.

## 8. Title and risk.

8.1 The risk in the Goods shall pass to you when they first enter your premises or are placed in storage pursuant to clause 5;

8.2 Title to the Goods shall not pass to you until the earlier of:-

(a) receipt by us of payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you in respect of which payment has become due in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) you resell the Goods, in which case title to the Goods shall pass to you at the time specified in clause 8.4.

8.3 Until title to the Goods has passed to you, you shall:-

(a) store the Goods separately from all other goods held by you so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

(d) notify the Company immediately if you become subject to any of the events listed in clause 15; and

(e) give the Company such information relating to the Goods as we may require from time to time.

8.4 Subject to clause 8.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before the Company receives payment for the Goods. However, if you resell the Goods before that time

(a) you do so as principal and not as the Company's agent; and

(b) title to the Goods shall pass from the Company to you immediately before the time at which resale by you occurs.

8.5 If before title to the Goods passes to you, you become subject to any of the events listed in clause 15 then, without limiting any other right or remedy the Company may have:-

(a) your right to resell the Goods or use them in the ordinary course of your business ceases immediately; and

(b) the Company may at any time:-

(i) require you to deliver up all Goods in your possession which have not been resold or irrevocably incorporated into another product; and

(ii) if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

## 9. Loss or damage in transit.

Any shortage or damage must be clearly stated upon the driver's Delivery Sheet and a written statement of the facts received at our branch and by the Carrier (if not ourselves) within 3 days after the date of delivery, otherwise no claim will be entertained. The package and contents should be retained for examination. Written notice of any non-delivery must be received at our branch within 7 days after the date of invoice. Time is of the essence of this Clause. Our liability in respect of any claim accepted under this Clause is limited to making up the shortage or replacing any Goods proved to have been damaged or lost in transit to the point of delivery, and we accept no liability for any loss or damage suffered by you, whether direct or consequential and howsoever arising.

## 10. Prices.

All Goods are sold subject to the prices and any relevant discounts ruling at the time of delivery. Our prices, discount rates and Conditions of Sale may be altered at any time without notice. All discounts and prices are calculated upon a "whole order" or "majority of the order" basis. If, when placing your order, you select only certain items or reduced quantities are specified, we must reserve the right to review the discounts and prices at which such orders are accepted.

## 11. Payment.

Payment in full without retention or set-off is required on or before the due date as set by the agreed credit terms. These terms will be reviewed on a regular basis. Overdue accounts, whether in part or in full may result in credit being immediately withdrawn.

If you do not comply punctually with these terms of payment we reserve the right to charge you interest on any amount overdue at the rate of 2% over the Royal Bank of Scotland plc base rate current for the time being, and without notice, to suspend further deliveries until all arrears (including interest) have been paid and, at our option to rescind any subsisting contract with you as to all or any parts of future deliveries but without prejudice to any rights already accrued to the Company under such contracts.

## 12. Performance.

It is your responsibility to determine that the Goods are sufficient and suitable for the purpose to which they are to be put. We cannot accept any responsibility either in respect of the supply or installation of any Goods or as to the ultimate performance of any product in which the Goods may be installed or the manner in which the Goods are to be utilised. We shall in no way be liable for any direct or consequential damage, loss or expense arising from any defect or inefficiency caused by the manner in which the Goods are used.

## 13. Defects after delivery.

All Goods supplied by the Company are manufactured by others. Accordingly, we shall pass on to you the benefit of the warranty, if any, given by the manufacturer of the Goods. Our liability under this Clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Goods, and we shall not be under any liability, whether in contract, tort or otherwise in respect of any Goods or loss resulting from such defects or from anything done or omitted in connection with the Goods or from any work done in connection therewith.

## 14. Return of Goods.

In no circumstances may Goods supplied against a firm order be returned without our prior written consent and the receipt of your advice note stating the reason for the return and the date and number of our invoice. All Goods returned must be securely packed and, unless we arrange collection, consigned carriage paid. If we collect we reserve the right to make a handling charge, and the issue of our collection note will not bind the Company to issue any credit in respect of the Goods.

## 15. Termination.

We may without prejudice to our other rights and remedies determine the contract or any unfulfilled part of it or withhold further deliveries or make partial deliveries if:-

15.1 you fail to make payment on the due date under this or any other contract between us;

15.2 you purport to cancel or suspend, or commit any breach of, this or any other contract between us;

15.3 you become insolvent or make any composition with your creditors or have a receiver appointed of all or any part of your undertaking or assets or go into liquidation (save for the purposes of amalgamation or reconstruction) and we shall be entitled to recover from you all our loss including any loss of profit or loss on re-sale.

## 16. Waiver.

Any failure by the Company to enforce any or all these Conditions shall not be construed as a waiver of any of our rights hereunder.

## 17. Rights of third parties.

For the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any term or condition hereof and nothing contained herein shall confer on any third party any benefit or the right to enforce any term or condition hereof.

## 18. The Customer.

The Customer warrants that all relevant information relating to the use of the Goods by the Customer and which has been forwarded to the Company in writing is full and accurate.

## 19. Limitation of liability.

The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.

The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by

(A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; and

(B) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.

The Company's liability howsoever arising and not withstanding that the cause of loss or damage be unexplained shall not exceed the value of any Goods lost or damaged.

The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market or the consequences of delay or deviation however caused.

Any claim by the Customer against the Company arising in respect of any Goods provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably possible for him to do so.

Notwithstanding the provisions above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

Nothing in these conditions shall limit or exclude the Company's liability for (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors; and (b) fraud or fraudulent misrepresentation.

## 20. Force Majeure.

Neither party shall be liable for any failure of or delay in the performance of this contract for the period that such failure or delay

is beyond the reasonable control of a party,

materially affects the performance of any of its obligations under this agreement, and

could not reasonably have been foreseen or provided against.

but does not include general economic or other conditions affecting financial markets generally.

## Dispute resolution.

Any dispute or difference arising out of or in connection with this contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

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