



1. BASIS OF SUPPLY

- (a) These Conditions of supply of goods and services of Promat International (Asia Pacific) Ltd (Promat) govern all orders to and contracts with Promat for the supply of goods and services and override any other terms or conditions stipulated, incorporated or referred to by the Customer. Accordingly these Conditions of supply of goods and services, except where they are varied by Promat in writing, are the conditions upon which Promat supplies goods or services.
- (b) No alteration or modification of these Conditions shall have effect unless such alteration or modification is accepted in writing by a duly authorised officer of Promat.

2. DRAWINGS, QUANTITIES & INTELLECTUAL PROPERTY

- (a) Any drawings or details of quantities or other information supplied by Promat must be treated as approximate and shall be subject to verification by the Customer and in the event of any alteration, modification or amendment thereto after quotation, Promat reserves the right to alter, modify or amend its quotation accordingly.
- (b) All intellectual property rights (including without limitation patents, copyrights, rights in a design and trade marks) in the goods or services are the property of Promat and nothing in these Conditions shall be construed as constituting an assignment or license thereof.
- (c) If the goods are manufactured by Promat, or Promat applies a process, in accordance with a specification of the Customer then the Customer shall indemnify Promat against all loss, damage, cost and expense awarded against or incurred by Promat in connection with the infringement of any intellectual property rights of any other person resulting from Promat's use of the Customer's specification.
- (d) Promat's employees or agents are not authorised to make any representations, or give any advice or recommendations, concerning the goods or services unless confirmed by Promat in writing. In entering into the contract the Customer acknowledges that it does not rely on, and waives any claims for breach of, any such representations, advice or recommendations which are not so confirmed.

3. PRICES

- (a) All prices are exclusive of duty or tax and Promat reserves the right to increase prices as a result of the increase or imposition of any duty or tax or by adjustments or alterations in currency rates of exchange.
- (b) All prices exclude delivery (pursuant to and defined in Condition 4 below) and packaging and packing costs unless otherwise stated.

4. DELIVERY

- (a) All delivery dates or periods given by Promat whether before or after acceptance of the order are given in good faith but Promat shall be under no liability whatsoever for any failure or delay in despatch, supply or delivery nor for any loss or damage arising in connection therewith.
- (b) Should despatch or delivery of the goods, or the supply of services, or part of them be delayed or prevented from any cause whatsoever beyond Promat's control or for a reason attributable to the Customer or its customers or agents then, in Promat's opinion, either the contract or any unfulfilled part thereof shall be terminated or Promat may extend the time for delivery until a reasonable period after such cause shall have ceased in which event the Customer shall be responsible for all storage and other costs incurred by Promat in connection therewith (including, without limitation, delivery and redelivery costs). Any termination shall not prejudice the rights and obligations of either party in respect of any part of the contract already completed but Promat shall have the right to sell undelivered goods and charge the Customer for any shortfall below the price under the contract.
- (c) Unless otherwise agreed delivery shall take place at the godown or factory of Promat or at a site nominated by Promat. The Customer shall be responsible for providing labour and facilities at the delivery point for the unloading of goods ordered by him and shall indemnify Promat against all claims whatever arising from such unloading operations. In the event Promat and the Customer agreed delivery to take place at a site nominated by the Customer, Promat reserves the right for its drivers and carriers to refuse to take their vehicles on such site if in the opinion of the driver or carrier the site conditions are such as to constitute a danger to the vehicles, the goods or to any persons or property in which event the provisions of Condition 4(b) apply.
- (d) Where the goods are to be delivered in instalments (but strictly without prejudice to Condition 6) each delivery shall constitute a separate contract and failure by Promat to deliver any or more of the instalments in accordance with these Conditions, or any claim by the Customer in respect of any one or more of the instalments, shall not entitle the Customer to treat the contract as a whole as repudiated.

5. PROPERTY & RISK

- (a) The risk in the goods shall pass to the Customer when Promat delivers the goods in accordance with these Conditions whether to the Customer or to any other person to whom Promat has been authorised by the Customer to deliver the goods.
- (b) Notwithstanding delivery and passing of risk the goods supplied hereunder shall remain the property of Promat until Promat has received payment in full in cash or cleared funds of all sums, which are or may hereafter become due from the Customer to Promat in respect of the goods or in respect of any other contract between the parties.
- (c) Until the property in the goods passes to the Customer the relationship between Promat and the Customer shall be that of bailor and bailee.
- (d) The Customer agrees to store the goods until they have been paid for in such a way that they are readily identifiable as the property of Promat.
- (e) The Customer shall nevertheless have authority until such time as property in the goods passes to the Customer to sell the goods to its customers, but in the event of the Customer selling the goods or otherwise disposing of them it is hereby agreed that any such sub-sale or disposal shall be deemed to be made on behalf of Promat (but without imposing any liability on Promat to the Customer's customer), and the Customer shall hold the proceeds of sale or rights arising there from against the Customer's customer on behalf of Promat until such time as the Customer shall have made full payment for such goods and immediately upon such sale or disposal the property rights of Promat shall pass to the Customer on condition that the Customer ensures that the Customer's customer pays the purchase price into a separate bank account in the name of the Customer.
- (f) The Customer is hereby also authorised to use the goods in any manufacturing or other process in the normal course of its business before payment in full has been made as referred to in Condition 5(b) but upon so doing the Customer shall set aside the price of the goods so used in a separate account as referred to in Condition 5(e).
- (g) Until such time as property in the goods passes to the Customer then Promat may recover and/or resell the goods or any of them and may enter upon the Customer's premises by its servants or agents for that purpose and the Customer hereby grants to Promat an irrevocable license to this effect which shall survive the termination of the contract for any reason.
- (h) Nothing in this Condition 5 shall confer any right on the Customer to return goods supplied by Promat or to refuse or delay any payment for them.

- (i) If the goods or any part thereof are incorporated in or used as material for or in manufacturing other products before payment in full to Promat the property in the whole of such products shall vest in and remain with Promat until such products have been sold and all Promat's rights hereunder in relation to the goods and/or the proceeds of sale thereof shall extend to such products. Promat's rights hereunder shall be in addition to any and all other rights it may have against the Customer at law or in equity.

6. PAYMENT & LIEN

- (a) Unless otherwise stated, payment for the goods or services shall be made by the last working day of the month (Monday-Friday) following the month of delivery.
- (b) Interest shall be payable by the Customer to Promat or any sum outstanding beyond the due date for payment at the rate of 3% per annum above the Prime Lending Rate quoted by The HongKong and Shanghai Banking Corporation Limited of Hong Kong from time to time.
- (c) Where payment is to be made by instalments the failure of the Customer to pay any instalment in due time shall entitle Promat to treat such failure as repudiation of the whole contract by the Customer and (without prejudice to any other rights) to recover damages for such breach of contract.
- (d) Promat shall have a general lien upon any goods of the Customer for the time being in the possession of Promat.

7. CANCELLATION

Once an order has been duly accepted by Promat cancellation by the Customer will only be accepted at the sole discretion of Promat subject to Promat being indemnified in full against all charges, losses (including loss of profit), costs and expenses incurred by Promat as a result of such cancellation.

8. SUSPENSION OR TERMINATION OF CONTRACT

- (a) If the Customer shall, in the sole opinion of Promat, be unable or be likely to be unable to pay any sums he owes Promat, Promat shall (without prejudice to any other rights) be entitled to demand security prior to delivery or the carrying out of any services either by payment in cash or by bank guarantee, notwithstanding any terms of payment previously agreed, and in the event that the Customer is unable to provide the security the Customer shall be deemed to have repudiated the contract and Promat shall be entitled to delay delivery of the goods indefinitely or refuse to commence any services or accept the repudiation of the contract without liability whatsoever.
- (b) If the Customer commits any breach of these Conditions or of the contract or if any distress or execution be levied upon the Customer or his property or if the Customer shall make or offer to make any arrangement with creditors or commit any act of bankruptcy or if any petition receiving order in bankruptcy be presented or made against him or if a receiver, administrative receiver, administrator or manager be appointed over all or any of the assets of the Customer or if a winding up order be made against the Customer or if the Customer goes into liquidation (otherwise than for the purpose of reconstruction or amalgamation) Promat shall, without prejudice to any other rights and remedies it might have and without any liability, have the right immediately by notice in writing to:-
 - (i) suspend or terminate any contract or any unfulfilled part thereof; and
 - (ii) stop delivery of any goods or services; and
 - (iii) call for immediate payment of all monies owing to Promat under any contract.

9. STORAGE, FIXING, HEALTH & SAFETY

- (a) All goods supplied to the Customer hereunder shall be stored and fixed in accordance with the manufacturer's instructions set out in the latest written recommendation of Promat and any relevant British Standard Codes of Practice and Promat shall be under no liability whatsoever for any loss or damage which may arise as a result of the failure to adhere to such recommendations in all respects.
- (b) Nothing in these Conditions, nor any compendiums, brochures, price lists, instructions, method statements or other documents or designs issued by or on behalf of Promat shall create or be deemed to create any obligation, whether expressed or implied, on Promat.

10. GUARANTEE & LIABILITY

- (a) Save as provided in this Condition 10 and except that this Condition 10 may be rendered void or unenforceable under any enactment, no term or condition is made or to be implied as to the quality (satisfactory or otherwise) or fitness of goods supplied or that they will be suitable for any particular purpose or for use under any specific conditions which may be known or made known to Promat and accordingly there are excluded all conditions or warranties expressed or implied by statute, common law trade usage or otherwise and Promat shall be under no liability to the Customer for any loss, damage or injury or expense arising from a defect in the goods or from any cause whatsoever relating to the goods.
- (b) Promat shall not, notwithstanding any other provision of these Conditions, under any circumstances be liable in contract, tort (including negligence or breach of statutory duty), statute or otherwise for any indirect or consequential loss or damage of any kind or for any increased costs or expenses or loss of profit, business, contract, revenues or savings.
- (c) The Customer shall inspect all goods immediately upon delivery and in the event that the Customer alleges that the quantity of goods delivered does not correspond with the quantity stated in the delivery note or that such goods are defective he shall within three days of delivery give to Promat notice in writing specifying the particular of his complaint. In the event of failing to give such notice as aforesaid, Promat shall have no liability in respect of any alleged non delivery of goods or defects therein which should have been apparent on a reasonable visual inspection at the time of delivery.

11. FORCE MAJEURE

Promat may cancel any contract without prejudice to any of the rights and remedies it may have and without any liability whatsoever if prevented from performing it, owing to any cause whatsoever beyond Promat's reasonable control.

12. MISCELLANEOUS

- (a) Time shall be of the essence of the contract.
- (b) Any notice to be given Promat or the Customer shall be sufficiently given if posted by first class letter post or delivered by hand to the other at the address set out in the contract. Every notice shall be deemed to have been received and given either forty-eight hours after posting or at the time of the delivery.
- (c) Promat shall be at liberty to enter into sub-contracts with third parties or to assign the contract for the purpose of discharging its obligations under the contract.
- (d) No waiver by Promat by any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (e) The contract and these Conditions are governed by Hong Kong Law and any dispute arising in relation to the goods supplied or the terms of the contract shall be determined by the Hong Kong Courts to whose jurisdiction and decision Promat and the Customer submit.

NOTE: SPECIFIC TERMS & CONDITIONS SHOULD BE OBTAINED FROM THE RESPECTIVE COUNTRY OFFICES.