

Merbok MDF Lanka (Pvt) Ltd – Terms and Conditions of Sale

1 GENERAL

- 1.1 For the purpose of these conditions of sale, the "Company" means Merbok MDF Lanka (Pvt) Ltd and its successors in title and assigns, "Pro-forma Invoice" means a pro-forma invoice issued by the Company confirming the terms in respect of the relevant order; the "Customer" means the Customer named in the Pro-forma Invoice, its successors in title and permitted assigns; "Goods" means all the supplied by the Company described in the Pro-forma Invoice; and, "Day" and "Date" referred to in the Pro-forma Invoice shall mean a day other than a Saturday, a Sunday or a public holiday in Sri Lanka. Where a Day or Date shall fall on Saturday, a Sunday or a public holiday the day after shall be applicable.
- 1.2 Any Goods supplied by the Company to the Customer will be supplied on these conditions only. If the Customer orders Goods, the Customer will be deemed to have accepted these conditions. The only circumstance where any variation to these conditions will apply is where a Director of the Company has expressly agreed in writing to that variation.

2 ORDER CANCELLATION

- 2.1 Cancellation of an order for Goods manufactured by the Company may only be accepted by the Company if the Company has received written notice of cancellation prior to the commencement of manufacture of the Goods.

3 PRICE

- 3.1 The price of the Goods will be the price contained in the Company's Pro Forma Invoice unless otherwise expressly agreed in writing by the Company.
- 3.2 Unless otherwise stated in the Pro-forma Invoice, the price of the Goods excludes any amount payable in respect of value added tax ("VAT") and other duties, levies and taxes imposed by the Government of Sri Lanka which will be paid by the Customer in addition to the price.

4 PAYMENT

- 4.1 Unless otherwise agreed, the price of the Goods and any other amounts payable by the Customer in respect of the Goods, will be paid in full no later than the terms specified in the Pro-Forma Invoice. However, the Company reserves the right to require payment for any Goods in cash before such Goods are delivered.
- 4.2 Subject to clause 4.1 and 4.3, payment must be by Letter of Credit (Subject to U.C.P 600) and in accordance with the Company's standard format, under Advance Payment, under Documents against Payment (D/P) or Documents against Acceptance (D/A) (subject U.R.C 522) via cheque, electronic funds transfer, cash or such other means as may be agreed by the Company before the payment is made.
- 4.3 The Company may, at any time, secure payment for Goods by way of a general security deed, an instrument by way of security such as a Banker's Guarantee, a mortgage or agreement to a mortgage, or in any other manner whatsoever.
- 4.4 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Company.
- 4.5 If full payment for the Goods is not made by the due date for payment, the Customer will pay, at the Company's discretion (and without prejudice to any other rights or remedies the Company may have, on demand, default interest on any amount outstanding, at a rate equal to 3% above the current base lending rate from time to time set by the Company's bankers from the Day when payment is due until the Day when payment is actually made and all expenses and costs incurred by the Company in connection with the Company recovering or attempting to recover any overdue amount.

5 DELIVERY

- 5.1 Unless otherwise agreed, the delivery terms are stated in the Pro-Forma Invoice and shall be in accordance with INCOTERMS 2010
- 5.2 Where the delivery terms state "ex-works":
- (a) the Customer is responsible for the collection of the Goods from the premises of the Company within (2) Days of being advised by the Company of the readiness of Goods for collection;
 - (b) the Customer is responsible to arrange and pay for suitable vehicles for the carriage of the goods either using its own vehicles or through subcontractors;
 - (c) insurance of the goods in transit is the responsibility of the Customer
 - (d) the company accepts no liability for damage that may be incurred to the Goods after the Goods are loaded on to the said vehicle;
 - (e) the Goods shall be collected between the hours of 9.00 am and 3.00 pm on the Day that has been agreed between the Customer and the Company;
 - (f) delivery will be deemed to have been made when the Goods are loaded onto the Customer's (or Customer's subcontractor's) vehicle;
 - (g) the Company accepts no liability for the Customer's (or Customer's subcontractor's) personnel or equipment whilst on the premises of the Company. Entering the premises of the Company is entirely at the Customer's (or Customer's subcontractor's) own risk.
- 5.3 Where the delivery terms state "C.F.R - named port of destination":
- (h) the price of the Goods includes the basic cost of the goods and costs of delivery of the Goods
 - (i) the carriage of Goods shall be arranged by the Company and unless otherwise agreed, be at the sole discretion of the Company
 - (j) insurance of the goods in transit is the responsibility of the Customer
 - (k) Delivery will be deemed to have been made when the Port Receipt Note is issued by the Port Authority of Colombo

5.4 The Company will endeavour to have Goods delivered or made available for collection (which ever is applicable) on agreed Dates but will not be held liable for late delivery. Late delivery does not entitle the Customer to cancel any order or part order.

5.5 If the Customer fails or refuses to take delivery of any Goods at an agreed delivery time, the Company may (without limiting any other rights or remedies the Company may have) charge the Customer for any expenses or additional costs incurred by the Company as a result of delay.

6 OWNERSHIP AND RISK

6.1 Ownership and Risk in the Goods shall pass from the Company to the Customer:

- (a) Where the delivery terms state "ex-works", when the Goods are loaded onto the Customer's (or Customer's subcontractor's) vehicle
- (b) Where the delivery terms state "CFR", when the Port Receipt Note is issued by the Port Authority of Colombo

7 CLAIMS FOR QUANTITY AND QUALITY

7.1 All claims for errors in delivery quantity where it is the Company's error is to be notified within 14 Days from invoice date identifying the invoice number container number and the pack barcode numbers.

7.2 The Goods supplied by the Company will substantially conform with the Company's specifications. All claims for Goods that do not meet the Company's specifications is to be notified within 60 Days from invoice date identifying the invoice number container number and the pack barcode number. Claims will not be considered:

- (a) unless a written claim is received by the Company within 60 Days of the invoice date for Goods to which the claim relates;
- (b) unless the Company is given the opportunity to inspect the Goods as soon a practical after the defect is discovered;
- (c) if the Goods are used for any purpose other than the purpose for which they are intended;
- (d) if the Goods have been modified or incorrectly stored, handled, installed or maintained;
- (e) if the instructions as to use, installation or maintenance of the Goods as contained in the current product data produced by the Company have not been adhered to (it being the responsibility of the Customer to obtain that information);
- (f) to any Goods which have been sold by the Company as seconds, downgrades or otherwise outside the standard specifications for those Goods.

7.3 The total liability of the Company for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of the Company's obligations to the Customer will be limited to the lesser of (a) the price of the Goods complained of or (b) the cost of repairing or replacing the defective Goods.

7.4 The Company will not be liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

7.5 While the Company will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods or their use or application, the Company does not accept any liability or responsibility in respect of such advice.

8 CHANGE OF TRADING ENTITY AND CUSTOMER DETAILS

8.1 The Customer must provide the Company with at least 14 days prior written notice of any change of name, address, contact details or legal status and make changes to the relevant documents referred to in clause 4.3

9 TRADE MARKS

9.1 The Customer will not use the Company's trade marks, logos or product names unless written permission is obtained from Director of the Company.

10 OTHER RIGHTS OF THE COMPANY

10.1 If any amount payable by the Customer to the Company is overdue, or the Customer fails to meet any other obligation to the Company (whether in relation to the sale of Goods or otherwise), or in the Company's opinion the Customer is likely to be unable to meet its payment for any reason whatsoever; the Company will cancel all or any unperformed orders with the Customer; and, invoke the deed of security of clause 4.3, and if necessary remove any Goods in the Customer's possession or control and dispose of them or retain them for its own benefit and for that purpose the Company may without notice, enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person.

11 GOVERNING LAW

11.1 These conditions will be governed by Laws of Sri Lanka and the Customer agrees to submit to the exclusive jurisdiction of the courts of Sri Lanka.

12 MISCELLANEOUS

12.1 If at any time the Company does not enforce any of these conditions or grants the Customer time or other indulgence, the Company will not be construed as having waived that condition or its rights to later enforce that or any other condition.

12.2 Where any provision of these conditions is rendered void, unenforceable or otherwise ineffective by operation of law, that will not affect the enforceability or effectiveness of any other provision of these conditions.

12.3 Company shall not be liable for any Port Demurrage, Detention or for any other charges , charged by the port or any other authorities due to the failure of the Customer (Buyer) to take delivery of goods ,strikes , riots , civil commotions, lock out situations or due to force majeure at the port of discharge or place of delivery /final destination.