

# **PURDIE DISHED ENDS LIMITED**

## **TERMS AND CONDITIONS OF BUSINESS**

### **1. DEFINITIONS**

In these terms and conditions

"Company"	means <b><i>Purdie Dished Ends Limited</i></b> a company incorporated under the laws of England with registered number <b>02260235</b>
"Customer"	means the person who enters into a Contract with the Company
"Contract"	means the contract  (1) for the sale and purchase of Goods and/or  (2) for the provision of Services  made between the Company and the Customer to which these terms and conditions apply
"Goods"	means the goods sold to the Customer by the Company
"Services"	means the services provided to the Customer by the Company
"VAT"	means British Value Added Tax
"Writing"	includes telex facsimile electronic mail and comparable means of electronic communication

### **2. FORM OF CONTRACT**

- 2.1 The following are the only terms and conditions on which the Company
    - 2.1.1 sells Goods and/or
    - 2.1.2 provides Services
  - 2.2 All offers quotations orders acknowledgements of orders and every contract
    - 2.2.1 for the sale by the Company and the purchase by the Customer of Goods and
    - 2.2.2 for the provision to the Customer by the Company of Services
- shall be subject to these terms and conditions
- 2.3 The Company

2.3.1 shall sell (and the Customer shall purchase) the Goods and

2.3.2 shall provide to the Customer the Services

in accordance with any quotation of the Company which is accepted by the Customer or any order of the Customer which is accepted by the Company subject always (in either case) to these terms and conditions which shall prevail over any and all inconsistent terms and conditions in any order of the Customer or in correspondence or elsewhere

2.4 No variation to these terms and conditions shall bind the Company unless it is agreed in Writing signed by an authorised representative of the Company on its behalf and by the Customer or its authorised representative on its behalf

2.5 No representation made by any employee or agent of the Company concerning any Goods or Services shall bind the Company unless it is confirmed in Writing signed by an authorised representative of the Company on its behalf

2.6 No order will result in a binding contract unless and until the Company has accepted it in Writing (by way of an order acknowledgement) signed by an authorised representative of the Company on its behalf

### 3. PRICE

3.1 Subject to clauses 3.2 3.3 and 3.4 below the price payable for Goods and/or for Services (as applicable) shall (unless otherwise stated by the Company in Writing signed by an authorised representative of the Company on its behalf) be

3.1.1 either the price agreed with the Customer and noted by the Company in its quotation or acknowledgement of order

3.1.2 or if no such price is agreed the price most recently charged by the company for the identical goods or services.

3.2 The Company at all times reserves the right to revise the price of any Goods to take account of any increase in costs to the Company due to factors beyond the control of the Company including (but not limited to) alterations in exchange rates new or increased taxes, duties or other import costs or in the costs of or relating to the manufacture or delivery of those Goods and the Customer shall pay such revised price as if it were payable under clause 3.1 above

3.3 Unless otherwise stated in our quotation all prices for sale of Goods

3.3.1 are net ex works for United Kingdom trade and

3.3.2 apply only to the total quantities and delivery dates and rates specified

3.4 Additional costs incurred by the Company on account of any alterations made at the Customer's request to quantities delivery dates or rates or agreed changes in specifications shall be borne by the Customer

3.5 All prices are exclusive of VAT and if chargeable this will be charged at the appropriate rate ruling at the date of

3.5.1 delivery of Goods or

## 3.5.2 invoicing of Services

**4. PAYMENT**

- 4.1 Payment of the gross invoice value is due
  - 4.1.1 for United Kingdom trade (in Goods) by the last day of the month following that in which Goods are invoiced
  - 4.1.2 for export trade (in Goods) as specified in Writing signed by an authorised representative of the Company on its behalf prior to acceptance of the order and
  - 4.1.3 for the provision of Services within 30 days of the date of the invoice submitted in respect of those Services, unless such services are an integral part of the provision of goods, in which case 4.1.1 will apply
- 4.2 Notwithstanding clause 4.1 above the right to demand payment at any time is reserved
- 4.3 The prompt payment of accounts rendered by the Company is a condition precedent of
  - 4.3.1 further deliveries of Goods and
  - 4.3.2 the provision of further Services
- 4.4 The acceptance of any new accounts is subject to two trade references and a banker's reference (or an acceptable credit rating from a recognised credit rating agency) and until such time as references which the Company considers satisfactory have been received by the Company no Goods will be delivered by the Company until the Company has received payment in full from the Customer unless an authorised representative of the Company agrees otherwise in Writing on behalf of the Company
- 4.5 The Customer shall not without the prior consent of the Company in Writing signed by an authorised representative of the Company on its behalf be entitled to deduct or set off from any money or monies for the time being due to the Company any claim for loss or expense alleged to have been incurred by the Customer by reason of any breach or failure to observe the provisions of the Contract or any other contract between the Customer and the Company
- 4.6 Without prejudice to any other right or remedy available to the Company interest shall be payable on all overdue accounts at the rate of 3% per annum above the base rate for the time being of Barclays Bank plc to accrue on a daily basis (as well after as before any judgment) from the due date for payment until actual payment and payable without deduction of tax

**5. CANCELLATION/MATERIAL VARIATION**

- 5.1 No Contract between the Company and the Customer may be cancelled or varied by the Customer without the prior consent of the Company in Writing signed by an authorised representative of the Company on its behalf which consent may be withheld at the absolute discretion of the Company and the Company shall have the sole right to determine that which constitutes a variation for the purposes of this clause 5
- 5.2 In the event of the Company's giving such consent the Customer will thereupon be immediately liable to pay to the Company

- 5.2.1 such amount as may be necessary to indemnify the Company from and against any and all expenses and other losses arising out of and all charges incurred by the Company in connection with the cancellation or variation

## **6. CARRIAGE**

- 6.1 Unless otherwise specified in our quotation and order acknowledgement, and subject to clause 6.5 below, the cost of carriage is charged extra
- 6.2 Prices which specifically include carriage cover United Kingdom deliveries in all mainland areas of England Scotland and Wales
- 6.3 Delivery will be effected
- 6.3.1 by road transport on suitable roads only to the address on the Customer's order
- 6.4 Extra costs of delivery beyond the mainland (including any duty and landing charges) or of special delivery at the Customer's request by passenger train or other express methods will be charged to the Customer
- 6.5 Unless subject to a specific agreement, all packing cases and other packing materials are charged extra and are non-returnable
- 6.6 In the event that the ordered quantity and quoted quantity vary, an adjustment to the unit cost of carriage may be made at the discretion of the company

## **7. LOSS OR DAMAGE IN TRANSIT**

Where the price includes delivery the Company will at its option either repair replace free of charge or credit Goods lost or damaged in transit to United Kingdom buyers or to British port for export buyers provided that the Customer notifies both the carriers and the Company in Writing of such loss or damage within such time as will enable the Company to comply with the carriers' conditions affecting such loss or damage and in the case of export buyers establishes to the satisfaction of the Company that such loss or damage occurred prior to shipment at British port

## **8. RISK AND TITLE**

- 8.1 The risk in Goods shall pass to the Customer as follows
- 8.1.1 where the Company delivers Goods or causes Goods to be delivered to the Customer or to the Customer's order then as from their arrival at the point where they are to be unloaded or
- 8.1.2 where the Customer collects Goods or causes Goods to be collected then as from their collection (provided that when Goods are loaded on to vehicles loading shall be the responsibility of and at the risk of the Customer)
- 8.2 Legal and equitable title to Goods shall not pass to the Customer until all amounts for the time being due and owing from the Customer to the Company (whether for the Goods or under any other contract made between the Company and the Customer) are received in full by the Company and until such time both the legal and beneficial ownership in Goods shall remain with the Company

- 8.3 For so long as the Customer remains in possession of any Goods whilst title thereto remains with the Company
- 8.3.1 the Customer shall be fiduciary agent and bailee for such Goods for the Company
- 8.3.2 the Customer shall store such Goods separately from any other goods and mark the Goods so that they are identifiable as the property of the Company
- 8.3.3 if such Goods are mixed with or incorporated or processed by the Customer into other articles such articles shall be separately stored and marked so as to be identifiable as being made from or with those Goods
- 8.3.4 the Customer hereby grants to the Company an irrevocable right and licence to enter upon any part of its premises to repossess such Goods and
- 8.3.5 the Customer shall insure such Goods with a reputable insurance company and hold the proceeds of any claim upon trust for the Company to settle outstanding payments
- 8.4 If the Customer resells any Goods whilst title thereto remains with the Company
- 8.4.1 the Customer shall not resell as an agent of the Company
- 8.4.2 the Customer shall hold the proceeds of sale of such Goods (or any debt due to the Customer representing such proceeds of sale) upon trust for the Company
- 8.4.3 any such debt due to the Customer which is subject to such trust shall upon demand be assigned by the Customer to the Company together with all such other rights (if any) as the Customer may have against its debtor for recovery of such debt
- 8.5 Whilst title in any Goods remains vested in the Company the Customer shall not either pledge or in any other way charge by way of security for any indebtedness any of such Goods and shall ensure that such Goods do not become subject to any charge lien or other encumbrance
- 8.6 The Customer shall not be deemed to be the agent of the Company for any purpose and shall indemnify the Company against any liability which it may incur to third parties (whether in contract tort or otherwise and including all expenses attributable thereto) in connection with the Goods other than liability which would have arisen if clauses 8.1 to 8.5 inclusive had not formed part of any Contract

## **9. TIME OF DELIVERY**

- 9.1 Any delivery date or dates given by the Company for delivery of Goods are to be treated as estimates only unless the Company has expressly undertaken in Writing signed by an authorised representative of the Company on its behalf to guarantee delivery by a specified date
- 9.2 Deliveries may in any event be postponed or suspended without liability during any period in which circumstances of any kind outside the direct control of the Company hinder or prevent the manufacture or despatch of Goods

- 9.3 Any delay in delivery on the part of the Company (for whatever cause) shall not entitle the Customer to rescind the Contract nor shall any delay entitle the Customer to demand the return of any deposit or other sums paid by the Customer to the Company nor shall the Company be liable to the Customer for any loss arising out of delay on the part of the Company
- 9.4 If the Customer fails to take delivery of any Goods or to give the Company adequate delivery instructions then (without prejudice to any other right or remedy available to the Company) the Company may in its absolute discretion either store the Goods until actual delivery and charge the Customer for the reasonable costs of storage or sell the Goods at the best price readily obtainable and charge the Customer for any and all incidental expenses and any shortfall below the price under the Contract

## **10. RETURN OF GOODS/DELIVERY IN INSTALMENTS**

- 10.1 Subject to clause 12.1 the Company will not accept the return of any Goods delivered by the Company to the Customer except at its discretion in special circumstances which are agreed between the Company and the Customer and recorded in Writing signed by an authorised representative of the Company on its behalf and by the Customer or its authorised representative on its behalf
- 10.2 In the event that any Goods returned to the Company by the Customer under clause 10.1 above are prior to return to the premises of the Company damaged in any way (whether or not through the act or default of the Customer) the Company reserves the right to claim an indemnity from the Customer in respect of any and all losses and expenses arising out of or connected with such damage
- 10.3 Where any Goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of such instalments in accordance with the Contract (or any claim by the Customer in respect of any one or more instalments) shall not entitle the Customer to treat the Contract as a whole as repudiated

## **11. QUALITY/QUANTITY/DESCRIPTION**

- 11.1 The quantity quality and description of the Goods shall be as set out in the Company's quotation (if accepted by the Customer) or in the Company's order acknowledgement provided that if any Goods are expressed to be of foreign origin they shall be sold by the Company subject to any usual limitations on the standard of manufacture of such country of origin
- 11.2 If for any reason the Company is unable to supply any Goods in accordance with the relevant Contract the Customer shall use his best endeavours to mitigate any loss to the Customer caused by the failure to supply
- 11.3 Deliveries of 0% more or less than the quantity ordered shall be accepted by the Customer as conforming to the Contract and the price shall be adjusted accordingly

## **12. WARRANTY AGAINST DEFECTS/LIABILITY**

- 12.1 Any Goods which are of defective manufacture or which fail to attain any expressly guaranteed performance rating (subject to any specified tolerances) will at the Company's option be replaced or repaired free of charge provided that
- 12.1.1 such defect of failure is notified to the Company in Writing within 30 days after delivery (for United Kingdom trade) or 60 days

after delivery (for export trade) and any Goods in respect of which no such notification is given to the Company shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for such Goods accordingly

- 12.1.2 in respect of Goods or parts not of the Company's manufacture its responsibility shall be limited to any benefits which it may receive under any guarantee given by the supplier of such Goods or parts
- 12.1.3 the Customer if so requested by the Company shall return the Goods carriage-paid to the Company's works or to an authorised repairer nominated by the Company for this purpose together with sufficient details in Writing to enable the Goods and the alleged defect or failure to be clearly identified but so that if the Company accepts the claim as justified the return carriage charges will be refunded and the new or repaired goods delivered free of cost to the Customer whereas if the claim is not accepted the Company shall so notify the Customer and hold the Goods for fourteen days for the Customer's instructions in Writing failing receipt of which the Company shall then be entitled to dispose of the Goods or store them at the Customer's expense without incurring any liability to the Customer
- 12.1.4 repairs alterations or modifications have not been made or attempted by anyone other than the Company or its authorised repairer and
- 12.1.5 any identification numbers or marks have not been altered defaced or removed
- 12.2 Subject always to clause 19 below all express or implied warranties or conditions on the part of the Company whether statutory or otherwise and all descriptions or representations are hereby expressly excluded
- 12.3 Without prejudice to the generality of clauses 12.1 and 12.2 above
  - 12.3.1 the Company shall not be liable to the Customer or to any third party for any indirect or consequential loss or damage howsoever caused (even if such loss or damage was reasonably foreseeable or the Company had been advised of the possibility of the Customer's incurring such loss or damage)
  - 12.3.2 in the event of the Company's incurring any liability whatsoever in respect of any Contract the Company's liability shall not in any circumstances exceed the price agreed with the Customer or otherwise payable under clause 3 above and
  - 12.3.3 the Company shall not incur any liability whatsoever in respect of any Goods once such Goods have in any manner been treated or processed or altered following delivery

### **13. INDEMNITY**

The Customer shall indemnify the Company against

- 13.1 all claims for infringement or alleged infringement of third parties' patent or other industrial property rights and all costs and expenses incurred in connection therewith arising from the execution of the Customer's order in accordance with the Customer's designs plans or specifications and

- 13.2 all claims for personal injury loss or damage to property bought against the Company by third parties arising from the presence or use of the Goods at the Customer's premises unless such injury loss or damage is solely attributable to the negligence of the Company its employees or agents

#### **14. DRAWINGS, ETC**

- 14.1 Unless otherwise specified in the Company's quotation all specifications drawings and particulars of weights and dimensions submitted therewith are approximate only and the descriptions and illustrations contained in the Company's catalogues price lists and other advertising matter are intended to present a general idea of the equipment described therein and none of these shall form part of the Contract
- 14.2 All specifications drawings and technical descriptions submitted with or in connection with the Company's quotation are its copyright and all such copyright material and all information and know-how whenever supplied shall at all times be treated by the Customer as confidential and shall not without the consent of the Company in Writing signed by its authorised representative on its behalf be used by the Customer except for the purposes of the operation of the equipment supplied thereunder nor shall they without like consent be communicated to third parties except insofar as may be necessary for the purposes of such operation

#### **15. PUBLICITY**

- 15.1 The Customer shall not use any order or the Company's name for advertising or publicity purposes without the Company's consent in Writing signed by an authorised representative of the Company on its behalf
- 15.2 The Goods may not be advertised or exhibited by the Customer except on the Customer's premises without the Company's prior consent in Writing signed by an authorised representative of the Company on its behalf

#### **16. FORCE MAJEURE**

- 16.1 The Company shall not be liable for any loss or damage caused by non-performance or by delay in the performance of any of its obligations to the Customer due to Act of God war civil disturbance government action strike lock-out or trade dispute (whether involving its own employees or those of any other person) difficulties in obtaining materials breakdown in machinery fire or accident or any other cause whatsoever beyond the reasonable control of the Company
- 16.2 Should any such event occur the Company reserves the right to cancel or suspend all or any part of the Contract without incurring any liability for any loss or damage thereby occasioned

#### **17. INSOLVENCY ETC. OF CUSTOMER**

If the Customer makes default in or commits any breach of any of the Customer's obligations or if any distress or execution is levied upon the Customer or any of the Customer's property or assets or if the Customer makes or offers to make any arrangement or composition with the Customer's creditors or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the Customer or if the Customer is a limited company and any resolution or petition to wind up the Customer or its business is passed or presented otherwise than

for reconstruction or amalgamation in such manner that the resulting company is bound by and assumes the Customer's obligations to the Company or if a receiver or administrative receiver of the whole or any part of the Customer's undertaking property or assets is appointed or if a petition is presented for the making of an administration order in relation to the Company or if the Company ceases to pay its debts or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if anything analogous to any of the foregoing events under the law of any jurisdiction occurs in relation to the Customer the Company shall (without prejudice to any claim or right it might otherwise make or exercise) have the right forthwith to determine the Contract by summary notice

## **18. NOTICES**

Any notice given by the Company to the Customer or by the Customer to the Company by hand post or facsimile transmission to the recipient at its principal or registered office for the time being shall be deemed to have been received and given (a) in the case of delivery by hand at the time of delivery (b) in the case of post at the time when in the ordinary course of post it would reach its destination and (c) in the case of electronic mail or telefacsimile, at the time of transmission and receipt of correct answerback if within normal business hours of the recipient and if not at 09.30 hours local time on the next following business day

## **19. SEVERABILITY**

These terms and conditions are considered reasonable by the Company and the Customer but in the event that any part of these terms and conditions is found by any court or other competent authority to be invalid unlawful or unenforceable by reference to the Unfair Contract Terms Act 1977 or otherwise then such part shall to that extent be severed from the remainder of these terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law

## **20. MISCELLANEOUS**

- 20.1 Any reference in these terms and conditions to any provision of a statute shall be construed as a reference to that provision as amended reenacted or extended at the relevant time
- 20.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation
- 20.3 In these terms and conditions unless inconsistent with the context or otherwise specified words importing gender include each other gender references to persons include bodies corporate firms and unincorporated associations and the singular includes the plural and vice versa
- 20.4 The failure by the Company to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of that right nor to operate so as to bar the exercise or enforcement of that or any other such right at any time or times thereafter
- 20.5 The Customer shall not assign or transfer the benefit of the Contract without the prior consent of the Company in Writing signed by an authorised representative of the Company on its behalf

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 The Contract shall be subject to and construed in accordance with English law
- 21.2 For the benefit of the other each party to the Contract hereby irrevocably submits to the non-exclusive jurisdiction of the English courts but the Contract may be enforced in any court of competent jurisdiction

**22. ISSUE DATE:** 20 April 2004