

## TERMS & CONDITIONS OF SALE - 20/09/2006

These conditions apply to all contracts for the sale of equipment by Container Kitchen Systems Ltd or any of its divisions and shall apply in place of and prevail over any terms or conditions contained or referred to in any client's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically agreed to in writing by a director of Container Kitchen Systems Ltd, Henley Park, Normandy, Guildford, UK, GU3 2BL Tel. 01483 238 800 Fax: 01483 238 801

### INTERPRETATION

In these Conditions:

"Company" means Container Kitchen Systems Ltd or CKS Foodservice Equipment.

"Contract" means an agreement between the Company and the Customer for the supply of Goods and/or Services

"Customer" means the person, firm, Company or organisation to whom the Goods and/or Services are supplied

"Goods" means the Goods sold or to be sold by the Company to the Customer

"Services" means the Design and/or Installation Services as applicable.

### GENERAL

All orders are accepted subject to these Conditions of Sale and they shall take precedence over any terms and conditions submitted by the Customer and cannot be altered except in writing by the Company. No term or condition not contained within these terms and conditions shall be binding upon the Company except where such is applicable under any Statute or Common Law. These shall apply notwithstanding any previous representation or warranty made by the Company, its directors, employees or agents.

### VALIDITY

The offer is open for 30 days from the date shown. It is subject to withdrawal or alteration at any time before a contract is concluded. All Goods are offered for sale subject to availability and subject to the Company's acceptance of the Customer's order. No order submitted by the Customer shall be deemed accepted by the Company unless and until it is confirmed by the Company, either orally or in writing, including electronic communication.

### PRICES

The Customer will pay the price together with an amount equal to the VAT applicable. Errors and omissions are subject to correction. If the Company's costs vary between the time of ordering and delivery the Customer will be notified and a new quotation will be issued.

### PAYMENT

Payment terms shall be specified in the quotation.

OVERDUE ACCOUNTS may be subject to an interest charge of 2.0 % per month.

If payment is not made in accordance with the quotation, or the Company has reason to think that the Goods are in jeopardy or that the Customer is unable to pay, the Company shall be entitled at its discretion to rescind the contract and repossess the Goods or to take any such other steps as it thinks fit.

### DESCRIPTION

The Company makes its best efforts to ensure that the descriptions and illustrations in its documentation are correct. They do not constitute a sale by description nor shall they constitute representations or warranties, express or implied, nor shall the Company be liable in respect thereof. The Company reserves the right to modify or vary the design, specification or finish of any of the products offered for sale unless the Company has given a written undertaking to the contrary.

### CARRIAGE

An additional charge for carriage may be made as part of the quotation.

### PACKING

All packing costs shall be included in the quotation price unless specifically excluded. In such cases they shall be quoted separately.

### DELIVERY

Delivery dates may form part of the quotation and will be confirmed upon receipt of order from the Customer, but they do not form part of any contract and it is agreed that s.29 (3) of the Sale of Goods Act shall not apply.

The company will make its reasonable endeavours to deliver the Goods in accordance with the contract, but delivery may be affected by events beyond the Company's control. The Company cannot be held liable for any losses which a Customer may incur in such circumstances. If a contract is delayed, it will remain in suspense until it may be executed under the conditions prevailing at the time of quotation. If advance notice of delivery time is required, the Customer should indicate this on the order.

If the Customer provides labour or assistance for the unloading of Goods specified in any quotation, or if the carrier gives any assistance beyond any terms agreed in the quotation this shall be at the sole risk of the Customer who will keep the carrier indemnified against all claims or demands which may arise, notwithstanding that property in the Goods may not yet have passed to the Customer, or where relevant, the person to whom delivery is made.

The person to whom delivery is made must inspect the Goods on delivery and sign the required proof of delivery document. A signature on that document will constitute conclusive evidence against the Customer of the receipt of the quantity of Goods indicated on that document, free from any apparent defect or damage. The Customer will not reject the Goods or any part of them because of short delivery.

Where the Goods are ready for delivery and the delivery is postponed at the request of the Customer, or if the Customer is unable or unwilling to take the Goods, then the Customer shall make payment for the Goods as if the Goods were delivered and invoiced on the date of such request or attempted delivery and the Company may store the Goods at its own premises or elsewhere at the Customer's sole risk and expense including costs of handling, storage, insurance and delivery.

### DAMAGE OR LOSS IN TRANSIT

The company's responsibility ends when the Goods arrive at the designated delivery point, notwithstanding that property in the Goods has not yet passed to the Customer; and therefore the Customer shall be responsible for the provision of appropriate insurance accordingly.

The designated delivery point shall be set out in the contract and will be:

- A SPECIFIED PLACE - the place or destination specified; providing that the Company shall not be liable for damage caused during unloading.
- WHERE CONTRACT INCLUDES INSTALLATION OR OTHER WORK - the site specified for installation or other works; providing that the Company shall not be liable for damage caused during unloading.

### Goods or parts damaged during transit:

- The Customer shall, whenever practicable, inspect the Goods on delivery. Where inspection cannot reasonably be made, the carrier's documentation should be marked "unexamined".

- The Customer shall notify the Company in writing within 3 days of delivery of any claim for damage
- Damaged Goods shall be retained by the Customer until they have been inspected by the Company or its agent
- Goods despatched by post:

Damage to items sent by post must be notified both to the postal authorities and to the Company within seven days of the Customer receiving an advice note:

Loss in transit: in the event of non-arrival or shortage of Goods, no claim will be entertained unless the Company receives written confirmation of non-arrival within fourteen days of the despatch date.

Non-delivery of postal items must also be notified, in writing, to both ourselves and the postal authorities within seven days of the despatch date indicated on the advice note.

### INSTALLATION

Installation will be included, where appropriate, in the quotation. The Customer shall allow the Company such supplies of electricity, water, gas and other services as may be available on the site free of charge unless agreed in writing. All installation work will be undertaken at the customer's risk.

### PASSING OF TITLE

Title in the Goods shall not pass to the Customer until full payment is received together with any other sums owing; and the Customer expressly agrees:

- not to resell, hire, lend, gift, pledge or otherwise dispose of the Goods until the full purchase price has been paid
- to take proper care of the Goods and store them in such a way that they clearly belong to the Company
- insure the Goods for an amount that is not less than the price of the Goods
- hold the Goods as bailee for the Company.

Until property is passed, the Company may enter upon any premises where such Goods are stored, or where they may be reasonably be thought to be stored, for the purpose of repossessing said Goods and recovering the same.

### CANCELLATION

If a Customer cancels an order for standard items of equipment after that order has been entered in the company's books, the Company reserves the right to hold the Customer liable to pay 25% (plus VAT as applicable) of the price as liquidated damages to cover the Company's administrative and other costs. If a Customer cancels an order for an item of equipment which has been made to his specific requirements, the Customer will be liable to bear the additional cost of converting the equipment to standard specification. Where the item(s) cannot be converted, the Customer will be liable for the cost of manufacture up to the time of cancellation as well as the liabilities outlined in the paragraph above.

### REPLACEMENT

The Company is a re-seller of Goods manufactured by third parties. This condition limits the scope of the Company's liability to the Customer in relation to the nature and/ or condition of the Goods.

### (a) New Equipment

This section applies only to equipment which is sold by the Company as new. The Company's sole responsibility shall be to give the Customer the same warranty as given to it in respect of the relevant Goods by the person, firm or Company which supplied these Goods to the Company (the Company's Supplier). The Company shall not be liable for any defect or fault in the Goods for any sum greater than the amount recovered in respect of the relevant Goods from the Company's Supplier. Warranties shall apply only provided that Goods have been used under normal conditions and inclusive of fair wear and tear. Equipment failure as a result of neglect and / or misuse and failure to maintain the equipment as directed in the product instruction manuals will not be covered by warranties.

Equipment which is the subject of a guarantee claim should be returned to the Company for inspection. Equipment may be inspected by the Company's staff at the premises specified by the Customer subject to agreement. The Company regrets that it cannot accept liability for any item which has been repaired before the Company has been able to inspect it or given authority for repair work to be carried out or in cases where other than genuine manufacturers components have been used. The Company does not undertake to pay for the cost of disconnecting or reconnecting any equipment or the carriage charges involved in returning it to the Company.

### (b) "Used" Equipment

The Company undertakes to rectify any piece of equipment which is found to be faulty in material or workmanship within one calendar month from the date of despatch from the Company's works (or by special agreement from the date of installation) provided that it has been used under normal conditions. This guarantee covers breakdowns experienced during normal working conditions inclusive of fair wear and tear. However, equipment failures that are a result of neglect and / or misuse and failure to maintain the equipment as directed in the product instruction manuals will not be covered by the guarantee.

### DRAWINGS

All drawings, designs, sketches, reports and plans submitted by the Company to the Customer are accepted in confidence and unless otherwise agreed in writing they shall remain the property of the Company and must not be wholly or partially copied, used or passed to any other person, company or organisation without the express written permission of the Company.

The Company also retains the right to request immediate return of all such information at any time without recourse to explanation.

### THIRD PARTY LIABILITY

The Customer will be liable for any claim relating to or arising out of the Goods whether brought against the Customer or the Company, under any statute or at Common Law which arises from any cause except that of negligence on the part of the Company's employees. The Customer will indemnify the Company against any such claim and against the cost of legal proceedings.

### LIABILITY

The Company shall not be under any liability to the Customer for any loss or damage whether direct, indirect or consequential arising out of this contract, whether liability in contract, tort, delict, quasi-delict or otherwise, and whether

by reason of the negligence of the Company's employees or the Company's breach of contract or otherwise. provided that this condition shall not apply to:

- any liability arising as aforesaid for death or personal injury
- any liability in respect of any breach of Sections 12 - 15 of the Sale of Goods Act;
- any consumer contract as defined in the Unfair Contract Terms Act

### LIMIT OF LIABILITY

Subject to the limitations of these Conditions, and to the extent that any applicable statutory provisions shall not make it unlawful so to do, the obligations undertaken by the Company under these Conditions constitute the sole liability of the Company in respect of its contracts.

### FORCE MAJEURE

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct result of the supply of Goods being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of Force Majeure. In these conditions "Force Majeure" means circumstances or events beyond the Company's reasonable control including (but not limited to): acts of God, war, riot, strike, lockout, trade dispute or labour disturbance; accident, breakdown of plant or machinery; fire; flood; storm; difficulty or expense in obtaining workmen, materials or transport; or other circumstances affecting the supply of the Goods by the Company's normal source of supply; or the delivery of the Goods by the company's normal route or means of delivery.

### GOVERNING LAW AND JURISDICTION

These Terms and Conditions shall be governed by and construed in accordance with English law.

The parties irrevocably agree that for the exclusive benefit of the Company the courts of England are to have jurisdiction to settle any disputes which may arise in connection with these Terms and Conditions.