



## United Kingdom Terms and Conditions

Your attention is specifically drawn to the provisions of condition 12 (**Limitation of Liability**).

Please read this document carefully and let us know if you have any questions. Our contact details are contained on our website ([www.bigbear.co.uk](http://www.bigbear.co.uk)).

### 1. Interpretation

1.1 In these terms and conditions, the following words have the meanings or shall be interpreted as stated below:

<b>Agreement</b>	the agreement for the provision of Goods by the Company to the Customer of which these terms and conditions form part;
<b>Business Day</b>	any weekday (Monday to Friday) excluding public holidays in England;
<b>Company</b>	Montesol Limited (company no. 463298);
<b>Conditions</b>	these terms and conditions;
<b>Customer</b>	the person, firm or company who purchases Goods from the Company;
<b>Goods</b>	the goods which are to be supplied to the Customer by the Company;
<b>Sales Tax</b>	sales tax of any kind at the rate in force from time to time.

1.2 All references to a statutory provision include references to any statutory modification, consolidation or re-enactment of it and all instruments or orders made pursuant to it.

1.3 Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.

1.4 The condition headings are inserted for ease of reference only and do not affect their construction.

1.5 You may translate these Conditions into the language of any other country if you wish but only the English language version may be relied upon by any of the parties.

### 2. Application of conditions

2.1 These Conditions:

2.1.1 apply to and are incorporated into the Agreement; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order or acceptance of an estimate or which are implied by law, trade custom, practice or course of dealing.

2.2 Each order or acceptance of a quotation for Goods by the Customer to the Company constitutes an offer to buy the Goods on these Conditions. No offer made by the Company may be accepted by the Customer and no contract between the parties will come into force other than:

2.2.1 by a written acknowledgement issued by the Customer; or

2.2.2 (if earlier) by the Company delivering the Goods to the Customer

when a contract for the supply and purchase of those Goods on these Conditions will be established. The Customer's standard terms and conditions, if any, attached to, enclosed with or referred to in any purchase order or other document will not govern the Agreement.

2.3 Estimates are given by the Company on the basis that no Agreement will come into existence except in accordance with condition 2.2.

2.4 These Conditions may be varied by the Company at any time and shall become effective immediately upon notification to the Customer.

### 3. Description

3.1 Subject to clause 4.5, the quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures and website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement and this is not a sale by sample.

### 4. Delivery

4.1 Delivery of the Goods shall take place at such place as may be agreed in writing between the Customer and the Company.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Agreement.

4.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are delivered or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

4.4.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

4.4.2 the Goods shall be deemed to have been delivered; and

4.4.3 the Company may store the Goods until actual delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 If the Company delivers to the Customer a quantity of Goods of up to 20% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall be invoiced for the actual quantities of Goods delivered in the manner specified in these terms and conditions.

4.6 The Company may deliver the Goods by separate instalments.

4.7 Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Customer to repudiate or cancel any other Agreement or instalment.

### 5. Non-delivery

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 48 hours of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods.

### 6. Risk/title

6.1 The Goods are at the risk of the Customer from the time at which they are despatched by the Company.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;

6.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale;

6.4.3 the proceeds of such sale are held by the Customer on trust for the Company and are not mixed with other monies or paid into an overdrawn bank account; and

6.4.4 the Customer shall account to the Company for such amounts on demand.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory

provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the Court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any Court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Agreement or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

6.5.3 the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Customer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Agreement, howsoever caused, the Company's (but not the Customer's) rights contained in this condition shall remain in effect.

## 7. Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price (in pounds sterling) set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any Sales Tax and export duties and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition either to the Company when it is due to pay for the Goods or to such other relevant person, as appropriate.

7.3 The Company and the Customer shall collaborate to take advantage of any double taxation treaties which may be in force.

## 8. Charges and payment

8.1 The Customer will pay each invoice submitted to it by the Company in pounds sterling, in full and in cleared funds, no later than the final Business Day of the month immediately following the month in which the invoice was raised.

8.2 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

8.2.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc accruing on a daily basis and compounded quarterly until payment is received, whether before or after any judgment and the Company; and/or

8.2.2 suspend any outstanding orders for Goods until payment has been made in full.

8.3 Time for payment to the Company is of the essence of this Agreement.

8.4 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

8.5 The Customer shall not be entitled to withhold, suspend, or set off any payments due to the Company for any reason whatsoever.

8.6 The Company reviews its charges regularly and reserves the right to increase them at its absolute discretion at any time. Any changes will become effective immediately upon notification to the Customer.

## 9. Quality

9.1 The Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.3 The Company shall not be liable for a breach of the warranty in condition 9.2 unless:

9.3.1 the Customer gives written notice of the defect to the Company within two days of the time when the Customer discovers or ought to have discovered the defect; and

9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of the warranty in condition 9.2 if:

9.4.1 the Customer makes any further use of such Goods after giving such notice; or

9.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.4.3 the Customer alters or repairs such Goods without the written consent of the Company.

9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranty in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.

## 10. Onward sale of goods

10.1 Subject to clause 10.2, the Customer shall not make any onward sale of the Goods to persons outside of the primary country in which the Customer operates.

10.2 In the case of any proposed sale of Goods by the Customer to persons in the European Economic Area, clause 10.1 shall not apply in respect of any passive sales where a person has approached the Customer of its own volition and the Customer has taken no active steps to procure the approach or any subsequent sale.

10.3 The Customer shall only advertise for sale Goods that it has in stock.

## 11. Confidentiality and data protection

11.1 The Company will treat as confidential all information disclosed to it by the Customer. The information will only be disclosed by the Company to any subcontractor, agent or other third party to the extent that such disclosure is necessary for the performance of the Services. This obligation of confidentiality will not apply to any information which was known to the Company prior to its disclosure by the Customer, is disclosed to the Company by a third party without any obligation of confidentiality or enters into the public domain other than by a breach of this condition by the Company.

11.2 The Customer will comply with its obligations under the Data Protection Act 1998 in relation to all personal data provided to the Company and will keep indemnified the Company in respect of all costs, claims, demands, actions, liabilities, damages and expenses which it may suffer or incur as a result of any breaches of such Act.

11.3 The Company will process any personal data (as defined in the Data Protection Act 1998) solely for the purpose of supplying the Goods and no other purpose.

11.4 The Customer shall ensure that any computer data supplied, by whatever method, to the Company is clean, uncorrupted and capable of being processed and does not contain any computer viruses. In the event of computer data being received by the Company corrupt or containing viruses the Company may, at its own option, return the data to the Customer or decontaminate it at the Customer's expense. For the avoidance of doubt, corruption occurring during any form of electronic transmission to the Company shall be at the Customer's risk.

## 12. Limitation of liability

12.1 This condition sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

12.1.1 any breach of this Agreement; and

12.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

12.3 Nothing in these Conditions limits or excludes the liability of the Company:

12.3.1 for death or personal injury resulting from negligence; or

12.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or

12.4 Subject to conditions 12.2 and 12.3:

12.4.1 the Company will not be liable, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise however for:

- (a) loss of profits;
- (b) loss of business;
- (c) depletion of goodwill and/or similar losses;
- (d) loss of anticipated savings;
- (e) loss of goods;
- (f) loss of contract;
- (g) loss of use;
- (h) loss of corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

12.5 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement will be limited to the price paid for the Goods.

12.6 If the Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or any agent, subcontractor or employee of the Customer, the Company will not be liable for any costs, charges or losses whatsoever sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

12.7 By entering into the Agreement, the Customer acknowledges and agrees that it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of the Company or any person who is not a party to the Agreement, relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

12.8 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within nine months of the event giving rise to the claim.

### 13. Force majeure

The Company will have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

### 14. General

14.1 The Customer warrants that it will comply with all applicable laws and regulations in the market in which it operates (and the market into which it makes an onward sales of the Goods) in relation to its use and purchase of the Goods. The Customer indemnifies the Company against any loss that the Company suffers as a result of any breach of this warranty.

14.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

14.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

14.4 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

14.5 Each of the parties acknowledges and agrees that, in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

14.6 The Customer will not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.7 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.8 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

14.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, will be governed by, and construed in accordance with, the law of **England and Wales**.

14.10 The parties irrevocably agree that the courts of **England and Wales** will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.