

TERMS & CONDITIONS OF SALE – LIQUID LEVER (KENYA) LIMITED

13 Jun 2017

MEANINGS

“Company” refers to Liquid Lever (Kenya) Ltd.

“Purchaser” refers to the individual, firm or company to whom a quotation is addressed or whose order is accepted by the Company.

“Goods” refers to goods the subject of such quotation or order.

“Conditions” refers to these Conditions of Sale which shall apply in respect of all contracts between the Company and the Purchaser for the purchase of goods from the Company.

“Contract” refers to the contract for the sale and purchase of the Goods.

“Intellectual Property” refers to any trademarks, registered or unregistered design rights, Kenya or foreign patents, copyright, confidential information, trade or business names, data base rights, know-how and any other intellectual property rights or obligations of any nature whether registerable or not in any country; and “Materials” refers to goods, drawings, documents, confidential records, data, texts, emails, DVD, computer programmes, diagrams, images (in any tangible or electronic medium whatsoever including paper based materials, computer programmes, software, CD’s, audio and / or visual tapes).

1. APPLICATION OF CONDITIONS

- 1.1 All contracts for the supply of Goods by the Company will be subject to the following conditions to the exclusion of any addition, modification or variation thereof save such addition, modification or variation as shall be agreed in writing by the Company. Unless expressly accepted in writing by the Company any qualifications of these terms and conditions of sale or any conditions which may be contained in any written or printed document including any order form of the Purchaser shall be deemed to be excluded from any contract arising between the Company and the Purchaser.
- 1.2 It is agreed that any documents sent by the Purchaser to the Company which contain terms and conditions are sent by the Purchaser and received understanding that they have no legal effect and the Purchaser waives any rights to which the Purchaser might otherwise have to rely on such conditions.
- 1.3 These Conditions shall have effect in place of any other terms and conditions which may previously have been notified by the Company to the Purchaser.
- 1.4 All Goods are supplied subject to the reasonable availability of suitable material to the Company.
- 1.5 All drawings, descriptive matter, weights, dimensions, specifications, brochures, catalogues, price lists and all advertising matter are approximate and by way of

identification only and are intended merely to present a general idea of the Goods or services described therein and their use shall not in any circumstances render any ‘sale by description’ nor shall they form part of any Contract. All prices quoted are subject to alteration or withdrawal by the Company from time to time without notice.

- 1.6 Technical performance is estimated only and the results of any tests which are carried out by the Company prior to delivery shall be final and the Purchaser shall have no claim whatsoever if the technical performance after delivery and / or installation differs from that obtained in the tests.
- 1.7 No representation or warranty is given as to suitability or fitness of the Goods for any particular purpose and the Purchaser shall satisfy himself in this respect and shall be totally responsible therefore.

2. DELIVERY

- 2.1 Any time or date quoted by the Company for delivery is given as accurately as possible, but is not guaranteed. The Purchaser shall have no right or damages to cancel the Contract for failure to meet the delivery time stated. In no event shall the Purchaser be entitled to make or purport to make, time for delivery the essence of this Contract.
- 2.2 If delivery or collection of the Goods is delayed as the result of any act or omission of the Purchaser, payment shall never the less be due to the Company as if the Goods had been delivered when ready and the Company shall be entitled to make a reasonable charge for the storage of the Goods until the Purchaser takes delivery of the Goods.
- 2.3 If 3 months have elapsed from the date on which the Purchaser was notified that the Goods were ready for dispatch or collection and the Goods have not been collected or no instructions for their dispatch have been given then without prejudice to any other right or remedy the Company might have, the Company shall be entitled to sell or dispose of the Goods, whether paid for or not, as it sees fit and to apply the proceeds of such sale or disposal (if any) in reduction of any claim the Company may have against the Purchaser, whether for the price or otherwise, and the Purchaser shall be deemed to have given the Company irrevocable authority to do so.

3. LOSS OR DAMAGE IN TRANSIT

- 3.1 Where the Company is responsible for carriage of the Goods, the Company shall not be liable for any loss of or damage to the Goods whilst in transit unless written notice of the loss or damage is given to the Company by the Purchaser within 5 days of the date of delivery.

4. INSPECTION

- 4.1 The Purchaser is under a duty whenever possible to make an inspection of the Goods on delivery or on collection as the case may be.
- 4.2 Where the Goods cannot be examined the carriers note, or such other note as appropriate shall be marked 'not examined.'
- 4.3 The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with, and, in any event will be under no liability if a written complaint is not delivered to the Company within 5 days of delivery detailing the alleged defect or shortage.
- 4.4 In all cases where defects or shortages are complained of the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Company before any use is made thereof or any alteration or modification is made by the Purchaser.
- 4.5 Subject to clause 4.3 and 4.4 the Company shall replace or credit any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever or howsoever arising from such shortage or damage.

5. RISK

- 5.1 The risk in the Goods shall remain in the Company until whichever is the earlier of delivery by the Company or collection by the Purchaser or payment for the Goods by the Purchaser at which time the risk in the Goods shall be transferred to the Purchaser.

6. TITLE

- 6.1 Title in the Goods shall only pass to the Purchaser on payment in full of all sums due to the Company under this contract and under all contracts between the Company and the Purchaser including any sums due under contracts made after this contract whether or not the same are immediately payable.
- 6.2 The Company may recover Goods in respect of which title has not passed to the Purchaser on whichever is the earliest of the following dates:
- (i) the expiration of any agreed period of credit in relation to the Goods;
 - (ii) the Purchaser doing anything or failing to do anything which would entitle a creditor to appoint a receiver to take possession of any of the Purchaser's assets or which would entitle any person (including the Purchaser itself) to present a Partition for winding up the Purchaser or to propose an application for an administration of or voluntary agreement in relation to the Purchaser under the Insolvency Act 1986 or on a resolution being passed for the winding up of the Purchaser

(otherwise than for the purpose of amalgamation or reconstruction whilst solvent) or on the Purchaser ceasing or threatening to cease carrying on its business by reason of insolvency or approaching insolvency or otherwise;

- (iii) distress or execution being levied against any of the Purchaser's assets or if a judgement against the Purchaser remains unsatisfied for more than 7 days; and the Purchaser irrevocably licenses the Company, its offices, employees and agents to enter upon any premises of the Purchaser, with or without vehicles, for the purpose either of satisfying itself that Condition 6.3 below is being complied with by the Purchaser or for recovering any Goods in respect of which title has not passed to the Purchaser.
- 6.3 Until title to the Goods has passed to the Purchaser under these Conditions it shall possess the Goods as fiduciary agent and bailee of the Company. If the Company so requires, the Purchaser shall store the Goods separately from other Goods and shall ensure that they are clearly identifiable as belonging to the Company. During such time as the Purchaser possesses the Goods with the Company's consent, the Purchaser may in the normal course of its business sell or hire the Goods as principal and without committing the Company to liability to the person dealing with the Purchaser.
- 6.4 Notwithstanding that title in the Goods has not passed to the Purchaser, the Company shall be entitled to maintain an action for a price of the Goods.
- 6.5 Upon cessation of the Purchaser's right to possession of the Goods in accordance with Clause 6.2 hereof:
- (i) The Purchaser shall at their own expense make the Goods available to the Company and allow the Company to repossess them.
 - (ii) The Purchaser hereby grants the Company, their servants and agents an irrevocable license to enter with or without vehicles any premises where the Goods are stored in order to repossess them and inspect them at any time.
 - (iii) The Purchaser shall identify all Goods supplied by the Company and provide them with every facility and cooperate fully with their identification and removal.
- 6.6 Each paragraph and sub-paragraph of this Condition 6 is separate, severable and distinct.

7. PRICE AND PAYMENT

- 7.1 All retail prices shown in the Company catalogue include VAT (where applicable) and are suggested prices at the time of going to press. Prices are subject to alteration without notice and Goods are offered subject to availability and shall be invoiced at prices ruling at the date of dispatch.

- 7.2 Unless otherwise agreed by the Company in writing the Purchaser shall pay the invoice in full to the Company in the currency invoiced by the Company to the Purchaser no later than 30 days from the date of invoice and for this purpose time shall be deemed to be of the essence of the contract.
- 7.3 The Company may deduct from or set-off against the price due all sums which the Company may be liable to pay to the purchaser. The Company may require all payments to be made by direct debit, standing order or any other payment arrangement and it reserves the right to demand security for payment at any time before continuing with or delivering any order.
- 7.4 Without prejudice to Condition 7.6 where the purchaser defaults in payment, the Company shall be entitled to suspend any or all further deliveries or production of Goods under the Contract and under any other contract between the Company and the Purchaser. The Purchaser shall pay all the Company's costs, charges and expenses directly or indirectly incurred in obtaining or otherwise enforcing payment of the same.
- 7.5 Credit facilities may be provided on request and a maximum credit limit will be set by the Company. If the Purchaser is a limited company, its Directors will upon entering into an agreement for the credit facilities (whether orally or in writing) accept personal liability on behalf of the Purchaser regarding payment for Goods supplied by the Company to the Purchaser. The Company reserves the right to withdraw credit facilities at any time and without notice.
- 7.6 The Company will charge interest at a rate of 5% above the base rate (CBR) of The Central Bank of Kenya until payment is received after as well as before any judgement thereof.
- 8. INTELLECTUAL PROPERTY**
- 8.1 The Purchaser warrants that any design, drawing, specification or instruction furnished or given to the Company shall not be such as to cause the Company to infringe any Intellectual Property. The Purchaser shall indemnify the Company against all claims, actions and costs made or brought against the Company whether in Kenya or elsewhere in respect of any infringement of Intellectual Property.
- 8.2 All Intellectual Property in all Materials and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that the Purchaser will not, without the prior written consent of the Company, give away, loan, exhibit, or sell such Materials or other information or extract from them or make copies of them or use them in any way except in connection with the Goods in respect of which they are issued.
- 8.3 The Purchaser shall as soon as it becomes aware immediately give the Company in writing full particulars of any claim being made or action pending, threatened or brought against the Purchaser or the Company in relation to an alleged infringement of Intellectual Property and shall make no comment or admission to any third party in respect thereof. If the Purchaser becomes aware of any use or proposed use by any other person, firm or company of any Intellectual Property described in Condition 8.2 which amounts or might amount either to infringement or to passing off it shall immediately give the Company full particulars of the same in writing.
- 8.4 If requested by the Company, the Company shall have conduct of any proceedings or defence relating to any claims under Condition 7 in such manner as the Company thinks fit and the Purchaser shall provide to the Company such reasonable assistance as the Company may think fit.
- 9. GUARANTEE**
- 9.1 Unless otherwise agreed, subject to sub-paragraphs 9.2 and 9.3, the Goods shall, if the Purchaser satisfies the Company that they have at all times been used strictly in accordance with any instructions given by the original manufacturer of the Company, be guaranteed against defects in material and or workmanship for a period of 12 months from the date of delivery or collection.
- 9.2 The Company shall under no circumstances be liable for normal wear and tear and the Company's obligations under this Guarantee are limited in the Company's discretion to either replacement or repair of the Goods, or the giving by the Company to the Purchaser of credit to the invoiced value of the Goods.
- 9.3 This Guarantee shall only operate if the Purchaser notifies the Company in writing of the intention to make a claim under the Guarantee within 7 days of the discovery by the Purchaser of any defect in the Goods.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions or the Contract shall limit or restrict the Company's liability for death or personal injury caused as a result of the Company's negligence, nor does the Company restrict its liability for fraudulent misrepresentation.
- 10.2 Save as the Company has expressly undertaken in Condition 9, all express and implied warranties or conditions, statutory or otherwise as to the quality or fitness of materials, Goods supplied, work or design undertaken or services performed are expressly excluded.
- 10.3 Under no circumstances shall the Company be liable for any losses special to the particular circumstances of the Purchaser, indirect or consequential losses or for loss of profit, damage to property or wasted expenditure.
- 10.4 Without prejudice to the previous provisions of this Condition, the Company's liability whether in respect of

one claim or the aggregate of various claims shall not exceed 1 million Kenyan Shillings or the contract price whichever is the greater.

- 10.5 The price of Goods is based on the assumption that the liability of the Company and the Purchaser are set out herein. The Purchaser is advised to insure against risk not accepted by the Company.

11. SAMPLES

- 11.1 Samples which are sent to the Purchaser for inspection are sent solely to enable the purchaser to judge the quality of the Goods and shall not render any subsequent sale, 'a sale by sample'. All samples are to remain the Company's property and shall be returned to the Company on request at the Purchaser's expense.

12. ACCESS

- 12.1 The Purchaser will ensure that at all times the Company has free access to the site where the Goods are to be delivered.
- 12.2 In the event of the Company being unable to obtain access to the site, or the site not being in a condition in which the Company can deliver the Goods, then the Company shall be entitled to and the Purchaser shall reimburse the Company for all of the costs incurred in any aborted visits to the site.
- 12.3 The Contract is made on the strict understanding that provision will be made on site free of charge for use by the Company of all equipment and facilities necessary including lifts and any other services required by the Company to carry out its obligations in accordance with the Conditions herein.

13. TERMINATION

- 13.1 If the Purchaser fails to pay any invoice in accordance with these Conditions, commits any continuing or material breach of these Conditions or if the Purchaser does anything or fails to do anything which would entitle a creditor to appoint a receiver to take possession of any Purchaser's assets or which would entitle any person (including the Purchaser itself) to present a petition for winding up the Purchaser or to propose an application for an administration of or voluntary arrangement in relation to the Purchase under the Insolvency Act 2015 or if a resolution is passed for the winding up of the Purchaser (other than for the purposes of amalgamation or reconstruction whilst solvent) or if the Purchaser ceases or threatens to cease its business by reason of insolvency or approaching insolvency or otherwise or if anything analogous to any of the foregoing under the law of any jurisdiction occurs to the Purchaser the price of all Goods invoiced and delivered shall immediately become due and payable and the Company shall be entitled to terminate or suspend forthwith the contract in whole or in part by giving written notice to the Purchaser, without prejudice to any other right or remedy available to the Company.

14. CANCELLATION

- 14.1 The Purchaser is not permitted to cancel this Contract except with the written consent of a Director of the Company.
- 14.2 Where there is an agreed cancellation as permitted by Paragraph 14.1 above, the Purchaser shall pay to the Company a sum to be determined, representing liquidated damages to compensate the Company against all losses incurred as a result of this cancellation.

15. FORCE MAJEURE

- 15.1 The Company shall be under no liability for any failure to perform any of its obligations under these Conditions or the Contract if it is prevented from or hindered in or delayed in manufacturing or delivering by normal route or means, the Goods or any part of the Goods under these Conditions by any circumstances beyond its reasonable control including, but not limited to; act of God, war, riot, civil commotion, government requisitions of any kind, strike, lock-out, labour disputes, fire, flood, explosion, import restrictions, failure by any third party to supply to the Company or break down of machinery. During any such period of cancellation the Purchaser shall have the right to purchase elsewhere at its own risk and cost such quantities of the Goods as may be necessary.

16. GENERAL

- 16.1 Any notice required to be given under this Contract shall be in writing and delivered personally or sent by any electronic means including facsimile, email, email and attachment(s), or by first class post to the registered office or business premises of the other party. If sent by any electronic means including facsimile, email, email and attachment(s), a copy of same shall be sent by first class post or delivered personally the same day.
- 16.2 Failure by the Company at any time to enforce any breach by the Purchaser of these conditions shall not be construed as a waiver by the Company of such conditions or any other conditions and the Company shall be entitled to enforce such breach at any time.
- 16.3 If any part of or whole provision of these Conditions shall be or become invalid, unenforceable or void, the remainder of the provision is in question and the other provisions shall remain valid and enforceable.
- 16.4 A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Right of Third Parties) Act 1999 ("the Act") to enforce any term of these Conditions or the Contract. Any right or remedy of a third party which exists or is available apart from the act is not affected.
- 16.5 The Contract and these Conditions shall be governed and interpreted according to the Laws of Kenya and shall be subject to the Jurisdiction of the Kenyan Courts.