



## **FIVE STAR PRODUCTS LTD**

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**“RESPONSIVE,  
INNOVATIVE,  
SOLUTION  
FINDERS”**

**Issue Date: July 2022**

## **FIVE STAR PRODUCTS LIMITED**

(“the Company”)

### **TERMS AND CONDITIONS OF TRADE**

#### **Terms of Payment**

- 1.1 All goods must be paid for in full on collection or delivery unless the Buyer has applied and, at the Company’s discretion, been accepted for credit by the Company in which case payment shall be made before or on the Payment Due Date as detailed on the invoice for the goods irrespective of whether the supply is completed as per the agreement so long as the goods supplied will perform the basic function for which they are intended.
- 1.2 The Company reserves the right to charge interest on overdue accounts at the Company’s bank unsecured commercial overdraft rate for the time being calculated on a daily basis. Unless otherwise provided the amount payable shall be that shown on the Company’s invoice without any deduction or set off whatsoever.

#### **Return of Goods for Credit**

- 2.1 No goods will be accepted for return and credit without the prior written authority of the Company and then only on such terms and conditions as the Company may agree.
- 2.2 All goods accepted by the Company for credit must be delivered at the Buyer’s expense in original condition and packaging and are subject to the Company’s inspection upon receipt.

#### **Warranty**

- 3.1 Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties, guarantees, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the goods sold or supplied or to these terms and conditions, are excluded.
- 3.2 The Buyer warrants that it has not relied on any representation made by the Company which has not been stated expressly in these terms and conditions or upon any descriptions or illustrations or specifications contained in any document including and catalogues or publicity material produced by the Company.

#### **Claims**

- 4.1 If the Buyer has any claim in respect of short supply, damage or faulty goods the claim must be made to the Company within 7 days of receipt of goods. The fact that no such claim has been made shall be conclusive evidence in any proceedings between the Company and the Buyer that the goods at the time of collection and/or delivery were in good order and condition.
- 4.2 For defective goods, which the Company has agreed in writing can be rejected, the Company’s liability is limited to replacing the goods. The total liability of the Company for any loss arising from any defect or non-compliance of the goods or any other breach by the Company of its obligations under these terms and conditions will not in any circumstances exceed the price charged by the Company.

#### **Title and Risk**

- 5.1 The risk in the goods supplied to the Buyer pursuant to these terms and conditions shall pass to the Buyer upon collection or delivery by the Company to the Buyer’s carrier for delivery to the Buyer but ownership in the goods shall not pass to the Buyer until all money the Buyer owes to the Company (whether in respect of the supply of those goods or otherwise) has been paid in full.
- 5.2 If any part of the goods shall become incorporated into or dealt with in a manner (including sub-sale) so as to lose its separate identity then the title of that proportion of goods so integrated equal in value to the contract price owed to the Company shall be reserved and vested in the Company until all money the Buyer owes to the Company (whether in respect of the supply of those goods or otherwise) has been paid in full.
- 5.3 Until the Company receives payment in full the Buyer shall hold or deal with the goods and/or the Company’s proportion of such integrated goods for and on behalf of the Company and in every respect as a fiduciary and agent.

- 5.4 Until the Company receives payment in full the Buyer shall store the goods so that they are readily identifiable from the Buyer's other stock by way of marking and or physical separation and shall maintain them in good condition.
- 5.5 The Company shall be permitted to enter upon the Buyer's premises to inspect the goods at any time.
- 5.6 If the goods or any part of the goods are sold by the Buyer prior to payment having been made to the Company then the proceeds of sale shall be held by the Buyer on trust for and on behalf of the Company in a separate account.
- 5.7 In the case of goods where title is reserved to the Company under this clause 5 the Buyer authorises the Company to approach the Buyer's existing or subsequent mortgagee(s) where appropriate to obtain the consent of the mortgagee to the reservation of title in the goods to the Company and confirmation that the Company shall have priority with regard to any goods in which title is reserved to the Company under these terms and conditions.
- 5.8 In the event of default under these terms and conditions the Buyer shall at the Company's request:-
  - (a) re-deliver the goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them (including allowing the Company to enter on to the Buyer's premises to repossess the goods without being liable in any way to the Buyer for any damage or loss suffered by the Buyer as a result of such action); and
  - (b) instruct any third parties who owe money in respect of goods to pay that money direct to the Company; and
  - (c) make any records available which may assist the Company to take the proceeds of the goods.

### **Personal Property Securities Act 1999 ("PPSA")**

- 6.1 Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA.
- 6.2 The Company reserves the right at its discretion to register a "financing statement" in respect of any goods supplied by the Company to the Buyer pursuant to these terms and conditions and which are subject to clause 5 of these terms and conditions and in respect of which credit has been extended by the Company to the Buyer.
- 6.3 The costs of registering a "financing statement" or a "financing change statement" shall be paid by the Buyer and where applicable, debited by the Company against the Buyer's account with the Company.
- 6.4 On the request by the Company the Buyer shall promptly execute any documents and do anything else required by the Company to ensure that the "security interest" created under these terms and conditions constitutes a "perfected security interest" over the goods.
- 6.5 The Buyer shall not agree to allow any person to file a "financing statement" over any of the goods without the prior written consent of the Company and shall notify the Company immediately if it becomes aware of any person taking steps to file a "financing statement" against any of the goods which are subject to clause 5 of these terms and conditions and in respect of which credit has been extended by the Company to the Buyer.
- 6.6 The Buyer waives the Buyer's rights to receive a "verification statement" in respect of any "perfected security interest".

### **Delivery**

- 7.1 The Company will make every effort to complete delivery on the date agreed but the Company shall not be liable for late delivery or consequential damages of any kind arising out of late delivery or failure to deliver at all, nor will the Company accept cancellation of any order because of late delivery beyond the control of the Company.

### **Default**

- 8.1 In the event that the Buyer fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed in respect of any part of its business or assets or the goods are at risk then the Company reserves the right:
  - (a) to treat all sums due or to become due from the Buyer whatsoever as immediately due and payable.
  - (b) to cancel any contract made with the Buyer or to cancel or suspend delivery of goods and materials and execution of work.
  - (c) by its officers servants or agents to enter into and upon the land of the Buyer or building thereon (without the necessity of giving notice) where the goods may be stored and to search for and remove and take possession of the goods without being in any way liable to the Buyer or anyone claiming under him for so doing.
  - (d) to withhold the further supply of goods and services on credit.
- 8.2 The Buyer shall be liable for all expenses (including solicitor/client legal costs and the Company's collection agency costs) incurred by the Company as a result of any default under these terms and conditions.

### **Cancellation**

- 9.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of goods at any time before the goods are delivered by giving notice to the Buyer. On giving such notice, the Company shall repay to the Buyer any sums paid in respect of the price of the goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 In the event that the Buyer cancels delivery of the goods, the Buyer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

### **Terms and Conditions sole evidence of Contract**

- 10.1 The quotation, invoice and credit application and these terms and conditions shall constitute the sole evidence of the contract between the Company and the Buyer to the exclusion of all conditions and warranties statutory or otherwise not expressly incorporated in these terms and conditions and it is strictly understood that the Buyer enters its purchase of goods from the Company solely and exclusively in reliance upon its own judgement and not upon any representation, condition or warranty made or alleged to be made by the Company or its agent.
- 10.2 Goods are supplied by the Company only on these terms and conditions of trade, to the exclusion of anything to the contrary in these terms of the Buyer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### **Arbitration**

- 11.1 Any dispute whatsoever arising under these terms and conditions shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or amendment thereof at the time being in force.

### **Goods and Services Tax**

- 12.1 Unless otherwise stated GST has not been included in the purchase price and will be charged at the rate applicable at the date of supply.

### **Force Majeure**

- 13.1 The Company shall not be liable to the Buyer for damages directly or indirectly arising from any delay or failure in delivery of the goods or failure to perform any of these terms and conditions where such delay or failure is caused directly or indirectly by an act of God, frost, electrical failure, fire, armed conflict, labour dispute, civil commotion, epidemic, Government intervention, or inability to obtain labour or materials, accidents, transportation delays, or any other cause beyond the Company's reasonable control.

### **Information and Privacy Act 2020**

- 14.1 For the purposes of facilitating the administration of the Company's business, the Buyer authorises the Company:-
- (a) to collect all information it may require about the Buyer from any third parties and authorises those third parties to release that information to the Company; and
  - (b) to hold all information given by the Buyer or any third party to the Company; and
  - (c) to use that information including giving the information to any other person for the purposes of assessing the Buyer's credit worthiness, for marketing products and services to the Buyer and to facilitate collection of debts from the Buyer.
- 14.2 The information will be collected, held and used on the condition that:-
- (a) it will be held securely at the Company's office at 3 Chinook Place, Hornby, and
  - (b) it will be accessible to any of the Company's employees and agents who need access to it for the administration of the Company's business; and
  - (c) the Buyer may request access to and correction of it at any time.

### **Consumer Guarantees Act 1993 ("the Act")**

- 15.1 Where the Company is supplying goods and/or services to the Buyer for business purposes within the meaning of the Act or for any other purpose which is not a domestic purpose, the provisions of the Act will not apply to the agreement in respect of the supply of those goods and/or services.
- 15.2 Where the Buyer supplies the goods on to a person acquiring them for business purposes it will be a term of the Buyer's contract with the buyer of the goods that the Act will not apply in respect of the goods.