

# CONTINENTAL SPORTS LTD

## TERMS AND CONDITIONS OF SALE

The buyer's attention is in particular drawn to the provisions of condition 11.4

### **1. INTERPRETATION**

- 1.1. The definitions and rules of interpretation in this condition apply in these conditions:
  - 1.1.1. "**Buyer**" means the person, firm or company who purchases the Goods from the Company
  - 1.1.2. "**Company**" means Continental Sports Limited (Company No. 00830200) of Millgate Mills, Paddock, Huddersfield HD1 4SD
  - 1.1.3. "**Contract**" means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions
  - 1.1.4. "**Delivery Point**" means the place where delivery of the Goods is to take place under condition 4
  - 1.1.5. "**Goods**" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them)
- 1.2. A reference to any law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it
- 1.3. Words in the singular include the plural and in the plural include the singular
- 1.4. Headings do not affect the interpretation of these conditions

### **2. APPLICATION OF TERMS**

- 2.1. Subject to any variation under condition 2.2, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) and no terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract
- 2.2. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation
- 2.3. Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions
- 2.4. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer
- 2.5. It shall be for the Buyer to ensure that the terms of its order and any applicable specification are complete and accurate
- 2.6. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Unless otherwise stated on the quotation, any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it

### **3. DESCRIPTION**

- 3.1. Quotations are based on information supplied by the Buyer
- 3.2. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order and it shall be the Buyer's responsibility to check the quotation or acknowledgement of order as to the quantity and description stated and inform the Company of any errors prior to the Goods being manufactured or despatched
- 3.3. If the Company has provided any layouts, drawings or such other specifications ("Specifications") in respect of Goods quoted for or ordered, the Buyer warrants that it has checked the Specifications and that the measurements, specifications and general content of the Specifications are satisfactory to the Buyer and it shall be the Buyer's responsibility to draw to the Company's attention any incorrect item
- 3.4. The Company neither warrants nor guarantees that Goods supplied are to the specifications required by any particular sporting governing body
- 3.5. All samples, drawings, descriptive matter and advertising issued by the Company and any descriptions or illustrations contained in catalogues or brochures 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 Contract and this is not a sale by sample

#### **4. DELIVERY**

- 4.1. Unless otherwise agreed in writing by the Company prior to despatch of the Goods, delivery of the Goods shall take place upon arrival at the Buyer's address as shown on the acknowledgement of order form
- 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 Buyer to terminate or rescind the Contract unless such delay exceeds 90 days from the date given as the estimated delivery date
- 4.4. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions or documents:
  - 4.4.1. risk in the Goods shall pass to the Buyer (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 delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance)
- 4.5. The Company will be responsible for only the unloading of the Goods upon arrival at the Buyer's premises. If, in the opinion of the Company's representatives, the Goods are to be taken an unreasonable distance or route from the point of unloading to where the Goods are to be placed or stored ("Destination Point") (for example, but without limitation, up or down steps or along corridors or where another easier route is available), it shall be the Buyer's responsibility to provide adequate manual labour at the Delivery Point for transporting the Goods to the Destination Point. For avoidance of doubt, the Company shall not be liable for any damage caused to either the Goods or the fabric of any building in the event of damage occurring whilst transporting the Goods to the Destination Point
- 4.6. The Buyer is responsible for unwrapping and inspecting the Goods on delivery and, without prejudice to clause 4.5, if there is any transit damage to any of the Goods on delivery, the Buyer shall write 'Damaged' on the delivery note of the driver and confirm such damage in writing to the Company within three days
- 4.7. If the acknowledgement of order states that installation of the Goods by the Company is included, the Company will carry out such work
- 4.8. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract
- 4.9. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment

#### **5. NON-DELIVERY AND CANCELLATION**

- 5.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer 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 Buyer gives written notice to the Company of the non-delivery within 3 days 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 at the pro rata Contract rate against any invoice raised for such Goods
- 5.4. Orders for Goods which are cancelled after despatch or which the Buyer requests to return after delivery will be subject to a handling charge of no more than 30% of the cost of that particular product and such returns shall only be accepted by the Company if it gives its prior written agreement
- 5.5. Any Goods returned under clause 5.4 must be returned in an unused and re-salable condition
- 5.6. The cost of carriage (and return carriage if applicable) shall be the Buyer's responsibility and such cost shall either be deducted from any credit note issued by the Company to the Buyer or invoiced separately
- 5.7. Orders for Goods which are to be manufactured as bespoke items for the Buyer cannot be cancelled after manufacturing has commenced

#### **6. RISK/TITLE**

- 6.1. The Goods are at the risk of the Buyer from the time of delivery
- 6.2. After delivery of the Goods, even though ownership may not have passed, the Buyer shall be responsible for the insurance of and safekeeping of the Goods through, for example (but without limitation), ensuring that its premises are secure at night

- 6.3. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.3.1. the Goods; and
  - 6.3.2. all other sums which are or which become due to the Company from the Buyer on any account
- 6.4. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.4.1. hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.4.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.4.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 6.4.4. 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 Buyer shall produce the policy of insurance to the Company
- 6.5. The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1. the Buyer has a bankruptcy order made against him or makes any arrangements with creditors, or otherwise takes the benefit of any provision for the relief of insolvent debtors, or (being a body corporate) convenes any meeting of creditors, 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/administrator/administrative receiver appointed of all or any part of its undertaking, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - 6.5.2. the Buyer 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 Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - 6.5.3. the Buyer encumbers or in any way charges any of the Goods
- 6.6. The Company shall be entitled to recover payment for the Goods even though ownership of the Goods might not yet have passed from the Company
- 6.7. The Buyer 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 Buyer's right to possession has terminated, to recover them
- 6.8. On termination of the Contract, however caused, the Company's (but not the Buyer's) rights contained in this condition 6 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 set out on the acknowledgement of order
- 7.2. The price for the Goods shall be:
  - 7.2.1. exclusive of any value added tax and all costs or charges in relation to carriage (subject to clause 7.3); and
  - 7.2.2. exclusive of installation, unless otherwise shown
- 7.3. The cost of carriage of the Goods may be paid by the Company on certain orders and shall be payable by the Customer on smaller orders, the cost of carriage changing from time to time and being as shown on the acknowledgement of order

## 8. PAYMENT

- 8.1. If specified by the Company, the Buyer shall pay the Company in full at the time of placing the order. In all other cases, unless otherwise agreed in writing by the Company, payment must be made in full within 30 days of the date of the invoice which shall be despatched at the same time as the Goods and, in all cases, time for payment shall be of the essence
- 8.2. Payment of the price for the Goods is due in pounds sterling
- 8.3. No payment shall be deemed to have been received until the Company has received cleared funds
- 8.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision
- 8.5. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer

8.6. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, together with the reimbursement of costs incurred in the recovery of such overdue sums

## 9. QUALITY

- 9.1. The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from such date, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979
- 9.2. The Company shall not be liable for a breach of the warranty in condition 9.1 unless:
  - 9.2.1. the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit, to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - 9.2.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there (and the Company shall reimburse such carriage costs if the Goods are found defective)
- 9.3. The Company shall not be liable for a breach of the warranty in condition 9.1 if:
  - 9.3.1. the Buyer makes any further use of such Goods after giving such notice; or
  - 9.3.2. the defect arises because the Buyer 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
  - 9.3.3. the Buyer or anyone allowed by the Buyer to use the Goods misuses the Goods; or
  - 9.3.4. The Buyer alters or repairs such Goods without the written consent of the Company
- 9.4. Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company
- 9.5. If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods
- 9.6. The Company shall not be liable for a breach of the warranty in condition 9.1 in respect of any moving or wearable element that forms part of the Goods that is not faulty but the normal wear of such element in its intended use requires periodic replacement of the element which may be necessary in a period of less than 12 months from the date of delivery of the Goods
- 9.7. Any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion only of the 12 month period

## 10. BUYER'S WARRANTIES

- 10.1. The Buyer warrants to the Company that:
  - 10.1.1. it or a suitably qualified representative of it shall check the positioning and installation of the Goods either during or immediately after such positioning or installation within the Buyer's premises and shall raise any issues with the delivery person at that time;
  - 10.1.2. it or its representatives are suitably qualified for the use of and supervision of the use of the Goods; and
  - 10.1.3. any instructions issued by the Company for the use of or storage of the Goods shall be followed

## 11. LIMITATION OF LIABILITY

- 11.1. Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - 11.1.1. any breach of these conditions
  - 11.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 11.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract
- 11.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract
- 11.3. Nothing in these conditions excludes or limits the Company's liability:
  - 11.3.1. for death or personal injury caused by the Company's negligence; or
  - 11.3.2. under section 2(3), Consumer Protection Act 1987; or
  - 11.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 11.3.4. for fraud or fraudulent misrepresentation
- 11.4. Subject to condition 11.2 and condition 11.3:

- 11.4.1. 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 the Contract shall be limited to the Contract price for the product in question; and
- 11.4.2. the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract

## **12. ASSIGNMENT**

- 12.1. The Company may assign the Contract or any part of it to any person, firm or company but the Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company

## **13. FORCE MAJEURE**

- 13.1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the Company's reasonable control including, without limitation, acts of God, war or national emergency, acts of terrorism, protests, fire, explosion, flood, lock-outs or other labour disputes of either party or a third party, or restraints or delays affecting carriers or inability or delay in obtaining supplies of materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract

## **14. GENERAL**

- 14.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not; failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract; and any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract
- 14.2. If any provision or any part of a provision of the Contract is found by any court or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect
- 14.3. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it
- 14.4. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts

## **15. NOTICES**

- 15.1. Any notice required to be given under this Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery, in case of communications to the Company, to its registered office or such changed address as shall be notified to the Buyer by the Company or, in the case of communications to the Buyer, to its registered office if it is a company or in any other case to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer
- 15.2. Any notice shall be deemed to have been duly received when left at the address referred to in this clause if delivered personally or on the second business day after posting if sent by pre-paid first-class post or recorded delivery
- 15.3. A notice required to be given under this Contract shall not be validly given if sent by e-mail