

**MIDDLETON PAPER COMPANY LIMITED**

**CONDITIONS OF SALE**

**1 DEFINITIONS**

1.1 In these Conditions the following terms shall have the following meanings unless the context requires otherwise:

"**Average Grammage**" means the arithmetic mean of the Grammage as determined by sampling and testing of a Lot of paper or paperboard.

"**Company**" means **MIDDLETON PAPER COMPANY LIMITED**; registered in England and Wales under company number 01243975.

"**Customer**" means a Customer of the Company;

"**Contract**" means any Contract for the sale of Goods by the Company to the Customer incorporating these conditions for the sale of Goods;

"**Conditions**" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller:

"**Goods**" means any goods or service forming the subject of this Contract including parts and components of or materials incorporated in them or design and consultancy;

"**Grammage**" means the weight in grams per square metre of paper or paperboard

"**Gross**" the total weight including the weight of the pallet and packaging

"**Lot**" means the total amount of Goods covered by one Contract

"**Nett weight**" for a delivery of sheets means the delivered number of sheets multiplied by the Ordered Grammage.

"**Nominal weight**" the average weight of paper supplied

"**Ordered Grammage**" means the Grammage specified in the Contract

"**Services**" shall include but not be limited to, paper cutting, reel resizing, re-winding, refurbishment, storage and delivery.

"**Tolerance**" shall mean the relevant tolerance as specified within these terms and conditions

"**tonne**" or "**tn**" shall mean 1,000 kilograms, unless otherwise stated

"**unit**" means a reel, bale, pallet, parcel or other transportation package.

**2 QUOTATION**

2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the Quotation. Quotations may be withdrawn by the Company at any time during this period by oral or written notice;

**3 ORDER AND CONTRACT**

3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:-

3.1.1 the Company's written acceptance;

3.1.2 delivery of the Goods; and

3.1.3 the Company's invoice;

3.2 These Conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document;

3.3 No variation or amendment of these Conditions or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both the Company and the Customer;

- 3.4 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customers acceptance of these conditions;
- 3.5 The Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Goods unless confirmed by the Company in writing;
- 3.6 The Company shall have the right to refuse to accept any orders placed for Goods or services;
- 3.7 The Customer shall be responsible for the accuracy of an order and for giving the Company any information necessary for the Company to perform the Contract.

#### **4 PRICES**

- 4.1 The prices for the Goods include packing and insurance. Value Added Tax, and other taxes or duties are excluded from the quoted price.
- 4.2 The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices to account for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules, quantities or any other costs of any kind arising for any reason after the date of the Contract;
- 4.3 Price changes shall take effect from the date of service on the Customer of notice of the change;

#### **5 PAYMENT**

- 5.1 Goods invoiced on or before the last day of a calendar month shall be paid by the Customer not later than the last business day of the following month.
- 5.2 All rebates and trade discounts are conditional on payment being received in accordance with clause 5.1 above.
- 5.3 If the Customer shall fail to pay any amount when it is due under this or any other contract with the Company, then the Company shall have the right (without prejudice to any other rights against the Customer), on notice in writing being given to the Customer, to treat the purchase price that is unpaid on all Goods invoiced or despatched by the Company as having become due immediately and payable by the Customer and in substitution to clause 5.1 of these Terms and Conditions.
- 5.4 The Customer is not entitled to withhold payment of any amount due to the Company by way of any set-off or counterclaim.
- 5.5 Without prejudice to any other rights of the Company, if the Customer fails to pay the amount due by the due date, interest shall be added to such amount at the daily rate of 4% over the base rate quoted by Barclays Bank plc for the period from and including the date of receipt (whether before or after judgment). The Company reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall also reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount;
- 5.6 If, in the Company's view, the Customer's credit worthiness deteriorates before delivery of the Goods, the Company may require payment in full or in part prior to delivery, or the provision of security for payment by the Customer in such form as is acceptable to the Company.
- 5.7 Time of payment is of the essence and the Company reserves the right to suspend supplies to the Customer where any amounts are overdue under any contract until such amounts have been paid in full including any late payment interest, compensation and costs as detailed in clause 5.3.
- 5.8 The Company reserves the right to alter or withdraw at any time any credit allowed to the Customer.
- 5.9 The Company do not deem payment to have been made until the Company has received either cash or cleared funds in respect of the full amount outstanding.
- 5.10 The customer may, with the agreement of the Company, return Goods to the Company provided such Goods are in the same state as when supplied to the Customer and verified by quality inspection. Such return will be subject to a restocking charge which, if not communicated otherwise to the Customer when such return is agreed by the company, will be 10% of the value of such Goods plus all transport and / or other costs.

#### **6 TITLE**

- 6.1 Notwithstanding the earlier passing of risk in accordance with clause 7 herein, title in the Goods (whether separate and identifiable or incorporated in or mixed with other goods) remains with the Company until the Customer pays to the Company the agreed price for the goods (together with any accrued interest at the rate specified in condition 5.5) and all other sums owed by the Customer to the Company in respect of any other goods or agreement;
- 6.2 Until the title passes, the Customer shall keep the goods separately and readily identifiable as the property of the Company;
- 6.3 The Company may at any time before title passes and without any liability to the Customer:-
  - 6.3.1 repossess and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and

- 6.3.2 enter any premises of or occupied by the Customer for the purpose of determining what, if any, Goods are held by the Customer and inspecting them, enter any premises of or occupied by the Customer.
- 6.4 Until title in the Goods has passed to the Customer:
  - 6.4.1 the Customer shall insure the Goods for the price at which the Goods were sold to the Customer against all insurable risks. The Customer shall hold any proceeds of such policy of insurance in relation to the Goods on trust for the Company and shall immediately account to the Company with the proceeds.
  - 6.4.2 the entire proceeds of sale of the Goods shall be held in trust for the Company
  - 6.4.3 the Customer must not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.5 If the customer re-sells any Goods in which title has not passed to the Customer, such resale shall (as between the Company and the Customer only) be made by the Customer as agent for the Supplier.
- 6.6 The Company may at any time appropriate sums received from the Customer as it thinks fit; notwithstanding any purported appropriation by the Customer.

## **7 RISK, DELIVERY AND PERFORMANCE**

- 7.1 The Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company;
- 7.2 Risk in the Goods passes when they are delivered to the Customer;
- 7.3 Risk of damage to or loss of the Goods shall pass to the Customer on delivery or collection;
- 7.4 The Company may at its discretion deliver the Goods by instalments in any sequence;
- 7.5 Where the Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of any of the Goods previously or subsequently delivered or undelivered;
- 7.6 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of the Goods ordered;
- 7.7 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a greater number of the Goods ordered to a maximum of 110% or minimum 90% of the ordered quantity;
- 7.8 Any dates quoted by the Company for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company, no regard has been paid to any quoted delivery dates;
- 7.9 If the Customer fails:-
  - 7.9.1 to take delivery of the Goods or any part of them on the due date; or
  - 7.9.2 to provide any instructions or documents required to enable the Goods to be delivered on the due date.
 the Company may on giving written notice to the Customer:
  - 7.9.3 terminate the Contract with immediate effect
  - 7.9.4 dispose of the goods as the Company may determine
  - 7.9.5 store or arrange for the storage of the Goods, and on the service of the notice:-
    - 7.9.5.1 risk in the Goods shall pass to the Customer;
    - 7.9.5.2 delivery of the Goods shall be deemed to have taken place;
  - 7.9.6 The Customer shall pay to the Company all costs and expenses including warehousing charges, disposal and insurance charges arising from its failure.
- 7.10 The Customer is solely responsible for unloading the Goods at the point of delivery and will provide adequate and appropriate equipment and manual labour for loading and unloading. The Customer shall indemnify the Supplier against each loss, liability and cost arising as a result of the Company or it's sub-contractors assisting the Customer (or a third party as specified on the Customer's order) in the unloading, loading or other removal of the Goods from the point of delivery.
- 7.11 The Customer is solely responsible for checking all goods upon receipt and during processing. No claims can be made if goods are not checked and subsequently used, distributed to a third party or stored for a period so as to exceed the warranty claim period as stated in Clause 10.
- 7.12 The Company will not be liable for any loss (including loss of profit), penalty, injury, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services from any cause. Nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.

**7.13** If the Company delivers to the Customer a quantity of Goods as specified on the order confirmation form and within the following tolerance limits the Customer shall not be entitled to object to or to reject any of the Goods by reason of the surplus of shortfall and shall pay for such goods at the pro rata contract rate.

<b>Quantity Q / tonne</b>	<b>Tolerance / %</b>
0 < Q <= 1	+/- 15
1 < Q <= 5	+/- 10
5 < Q <= 10	+/- 7.5
10 < Q <= 20	+/- 5
20 < Q	+/- 2.5

7.14 In the event where a Customer specifies any tolerance exclusively in one direction, double tolerance will apply in the other direction.

7.15 The delivered quantity of the Goods is based on weight, which is determined at the time when the Goods are manufactured and packed.

7.16 Unless otherwise agreed the weight of paper and paperboard is determined as gross for reels and nominal for sheet.

7.17 An order for paper or paperboard outside the normal stock range of the Company shall be deemed to have been fulfilled in accordance with the Contract if the Company delivers to the Customer Goods that do not deviate from the Contract quantity by more than the tolerances stipulated in clause 7.14 above. Where a Lot comprises several Deliveries, each Delivery shall be considered separately.

7.18 Claims arising from the Company delivering to the Customer or the customer's nominee a quantity of Goods less or more than he contracted for must be notified by the Customer to the Company within seven days of the Customer or the customer's nominee receiving any document stating or certifying the weight of the Goods delivered.

7.20 In the event of any shortage deemed to have occurred in transit, the Customer shall on receipt of the Goods, in the interests of the two contracting parties, duly notify the carrier by annotating the delivery note.

7.21 A Delivery of paper or paperboard will be considered delivered correctly with regard to Grammage when:

7.21.1 the Average Grammage in relation to the Ordered Grammage stays within the Tolerances as stated below and

7.21.2 the test values for individual Units in relation to the Ordered Grammage stay within the Tolerances as stated below.

7.22 If a Lot comprises two or more Deliveries, the Average Grammage of each Delivery must be determined separately and be within a Grammage Tolerance +/- 7.5%

7.23 A delivery of a Lot of paper or paperboard shall be deemed to have been completed in accordance with the Contract if the delivered sizes (in the case of sheets, the width and length and in the case of reels, the width) are in accordance with the following tolerances:

Sheets: Tolerance + / - 2 mm

Reels: Tolerance + / - 3 mm

## **8 CANCELLATIONS**

8.1 If the Company, at its absolute discretion agrees to accept cancellation of this Contract, the Company reserve the right to apply a cancellation charge of 15%. If the Stock has been ordered specifically or converted for a Customer's requirements we reserve the right to invoice the Customer for the Goods in total.

8.2 If the Customer purports to cancel this Contract subject to clause 8.1 above and/or refuses to accept delivery of ordered Goods and/or performance of ordered Services, the Customer will indemnify and keep indemnified the Company against any and all lost profits, costs (including increased administration costs and legal costs on a full indemnity basis), expenses, damages, warehousing charges as defined in clause 9 below; and any other loss and/or Liability suffered by the Company as a result.

## **9 WAREHOUSING CHARGES**

9.1 A warehousing charge of £1.25 per pallet per week or £1.25 per tonne per week for reels applies where:

9.1.1 Stocks held on a consignment basis by the Company are not called off by the Customer as contracted

9.1.2 Goods are returned to our warehouse in accordance with clause 8.2 above

9.1.3 Delivery of the Goods is delayed for any reason in accordance with clause 7.9.6 above

## **10 CLAIMS NOTIFICATION**

10.1 If the Goods are manufactured, distributed or disposed of by the Customer, this constitutes acceptance of the Goods and the Customer will be liable for payment in full.

10.2 Any claim that any of the Goods have been delivered damaged, are not of the correct quantity, quality, or do not comply with their description, shall be notified in writing by the Customer to the Company as soon as possible but no later than within 7 days of the delivery of the Goods;

10.3 Any alleged defect shall be notified by the Customer to the Company as soon as possible but no later than within 7 days of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within 7 days of the defect coming to the Customer's attention and in any event within 3 months from the date of delivery;

- 10.4 No claims in respect of Goods allegedly damaged in transit or lost will be accepted if the company is not notified in writing of such loss or damage and of the relevant particulars within the appropriate time limit as specified above;
- 10.5 Any claim under this condition must be in writing and must contain full details of the claim including the roll descriptions of any allegedly defective Goods;
- 10.6 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this clause and the Customer shall (if so requested in writing by the Company) promptly return any of the Goods the subject of any claim and any packing materials securely packed in their original container and carriage paid to the Company for examination;
- 10.7 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these Terms and Conditions.

## **11 SCOPE OF CONTRACT**

- 11.1 Under no circumstances shall the Company have any liability of whatever kind for:-
  - 11.1.1 Any defects resulting from wear and tear, accident, improper use by the Customer, or use by the Customer except strictly in accordance with the instructions or advice of the Company or neglect or from any instructions or materials provided by the Customer;
  - 11.1.2 Any Goods which have been adjusted, modified or repaired, except by the Company;
  - 11.1.3 The suitability of any of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
  - 11.1.4 Any substitution by the Customer of any materials or components not forming part of any specification of the Goods agreed in writing by the Company;
  - 11.1.5 Any descriptions, illustrations, specifications, figures as to performance, drawings, and particulars of weights and dimensions submitted by the Company, contained in the Company's catalogues price lists or elsewhere, since they are merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;
  - 11.1.6 Any technical information, recommendation, statement, or advice furnished by the Company its employees or agents not given in writing in response to a specific request from the Customer before the Contract is made; or
  - 11.1.7 Any variations in the quantities or dimensions of any of the Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods and substituted materials or components are of a quality equal or superior to those originally specified.

## **12 EXTENT OF LIABILITY AND WARRANTY**

- 12.1 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence breach of statutory duty or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:
  - 12.1.1 for death or personal injury resulting from the Company's negligence; and
  - 12.1.2 as expressly stated in these Conditions.
- 12.2 If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged, are defective, are not of the correct quantity, or do not comply with their description, the Company shall at its option replace with similar Goods any of the Goods which are missing, lost or damaged or do not comply with their description, alternatively the Company must allow the Customer credit for the invoice value of the items which are missing, lost or damaged or do not comply with their description.
- 12.3 The delivery of any repaired or replacement Goods shall be at the Customer's premises or other delivery point specified for the original Goods;
- 12.4 Where the Company is liable in accordance with this Condition in respect of only some or part of the Goods, the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods;
- 12.5 The Company shall not be liable where any of the Goods, the price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacement for such lost or damaged Goods will, if available, be for supply to the Customer at the prices ruling at the date of despatch;
- 12.6 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods;
- 12.7 The Company shall not be liable for any indirect loss suffered by the Customer arising out of a breach by the Company of this Contract;
- 12.8 The Company warrants that the Goods supplied will at the time of delivery correspond with the description of the Goods given by the Company to the Customer at delivery. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law;
- 12.9 The Company shall not be liable for any loss or damage whatsoever due to any failure by the Company to deliver the Goods (or any of them) promptly or at all;

- 12.10 Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) promptly the Customer shall be bound to accept delivery and to pay for the Goods in full provided that the delivery shall be rendered at any time within 3 months of the original delivery date given by the Company;
- 12.11 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 12.12 The Company is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses of damages, whether direct or indirect; and even if such losses and/or damages were foreseen, foreseeable or known, or the Company was advised of the possibility of them in advance:
  - 12.12.1 loss or damage incurred by the Customer as a result of third party claims;
  - 12.12.1 loss of actual or anticipated profits;
  - 12.12.2 loss of business opportunity;
  - 12.12.3 loss of anticipated savings;
  - 12.12.4 loss of goodwill;
  - 12.12.5 any indirect, special or consequential loss or damage howsoever caused.
- 12.13 Any claim under warranty will be invalidated if the Customer fails to prove the identity and origin of the goods by failing to provide the original labels attached to the goods when delivered.

**13 GENERAL**

- 13.1 The Company may sub-contract the performance of the Contract in whole or in part;
- 13.2 The Customer shall not assign the benefit or burden of the Contract whether in whole or in part and it shall be a condition of any such consent to any sub-letting of this Contract that the Customer shall:-
  - 13.2.1 ensure and be responsible for the compliance by any sub-contractor with the terms of this Contract;
  - 13.2.2 include in the sub-Contract provisions consistent with these Conditions for the benefit of and enforceable by the Company; and
  - 13.2.3 furnish the Company with copies of any sub-Contract upon the Company's request at any time.
- 13.3 The Company shall have a lien on all the Customer's property in the Company's possession for all amounts due at any time from the Customer and may use sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 7 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal the Company shall be discharged from any liability in respect of the Customer's property;
- 13.4 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Company or becomes insolvent, has an administrative receiver appointed of its business, or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in the case of termination may forfeit any deposit paid;
- 13.5 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall compensate the Company in full on demand for all claims expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party;
- 13.6 All third party rights are excluded and no third party shall have any right to enforce this Contract.

**14 INTELLECTUAL PROPERTY**

- 14.1 Where any specifications and designs of the Goods or any of the Goods have been provided to the Customer the copyright, design right or other intellectual property in them shall remain the property of the Company;
- 14.2 The Customer shall not make any modification to the packaging of Goods, nor alter, remove, or tamper with any trade marks used on or in relation to the Goods.

**15 CONFIDENTIALITY**

- 15.1 The Customer shall not at any time whether before or after the termination of this Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business unless required to do so by law.

**16 FORCE MAJEURE**

- 16.1 The Company shall not be liable for any failure in the performance of any of its obligations under the Contract caused by factors outside its control, non-exclusive examples of which are instructions or interference by any government or other authority, act of God, lock-out of work people, terrorism, fire, accident, war, blockade, civil commotion, strikes, epidemics, labour disputes, shortage of fuel, power, labour or raw materials, breakdown of machinery, or inability to obtain permission to export or import; any deliveries suspended as a result of any such circumstances shall be made as soon as possible thereafter consistently with due performance of other deliveries under the Contract and at intervals approximating to the intervals before deliveries under the Contract.

**17**      **LAW AND JURISDICTION**

- 17.1      The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that the Company invokes the jurisdiction of the courts of any other country.
- 17.2      If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions, which shall remain in full force and effect.
- 17.3      If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

**18**      **NOTICES**

- 18.1      Any notice given under these deed shall be in writing and may be served:-
  - 18.1.1              personally;
  - 18.1.2              by registered or recorded delivery mail;
  - 18.1.3              by telex or facsimile transmission (the latter confirmed by telex or post); or
  - 18.1.4              by any other means which any party specifies by notice to the other.
  - 18.1.5              Each parties address for the service of notice shall be its above mentioned address or such other address as it specifies by notice to the other;
- 18.2      A notice shall be deemed to have been served:-
  - 18.2.1              if it was served in person, at the time of service;
  - 18.2.2              if it was served by post, Forty eight hours after it was posted; and
  - 18.2.3              if it was served by telex or facsimile transmission, at the time of transmission

