

# Ultima Sports Limited

## Terms and Conditions of Sale and Supply

In these terms and conditions ("Conditions") "Ultima" means Ultima Sports Limited; "the goods" means any item of whatsoever nature or part thereof or service which is to be sold or supplied by Ultima; the vehicle means any vehicle comprising all or any of the goods; "the Customer" means the person who buys or has agreed to buy the goods.

### 1. ACCEPTANCE OF ORDERS

- 1.1. Ultima contracts for the supply of goods and/or services only subject to these Conditions and all terms and conditions in the Customer's order or enquiries inconsistent therewith shall be of no effect.
- 1.2. The placing of an order following a quotation given by Ultima shall not be binding on Ultima unless and until accepted by Ultima in writing.
- 1.3. The terms and conditions contained herein shall constitute the entire agreement between Ultima and the Customer and any modification to these conditions will be binding only if it is evidenced in writing signed on behalf of Ultima and such evidence contains a specific reference to these Conditions being modified.
- 1.4. In no circumstances shall the Customer cancel a contract to which these Conditions apply without Ultima's written agreement and in particular Ultima shall not be obliged to accept returned goods unless specifically agreed in writing by Ultima and subject always to the Customer paying a handling charge. If Ultima agrees to the Customer cancelling a contract the Customer will indemnify Ultima against all losses (including loss of profit) suffered by Ultima arising out of such cancellation.
- 1.5. All specifications, illustrations, colours, drawings and diagrams in Ultima's catalogues, trade literature and other published matter are of a generally informative nature and are approximate only and none of these form part of any contract or give rise to any independent or collateral liability of whatsoever nature on the part of Ultima and Ultima shall be under no liability whatsoever for inaccuracies, changes or alterations in specifications dimensions or measurements given, quoted or made by it.

### 2. ESTIMATES AND PRICES

- 2.1. Unless otherwise stated in writing the prices estimated or quoted by Ultima are exclusive of packaging, freight and insurance charges, charges for delivery, VAT and other applicable taxes, duties or levies of any kind whatsoever, all of which are payable in addition by the Customer.
- 2.2. Any date for collection quoted by Ultima is an estimate only and Ultima will in no circumstances be under any liability whatsoever for any failure to make the goods available for collection on any such date.

### 3. PAYMENT

- 3.1. The time of payment shall be of the essence of any contract to which these Conditions apply and unless otherwise expressly stated payment shall be due on or before the date the goods are collected.
- 3.2. The Customer shall not be entitled to make deduction from any payment due to Ultima in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by Ultima.
- 3.3. Without prejudice to any other rights, failure to pay the price or part thereof or other monies payable by the Customer will also entitle Ultima at Ultima's sole discretion either to refuse to make delivery of the goods or any further consignment of any goods agreed to be supplied or to cancel any contract to which these Conditions apply, either in whole or part, by notice in writing to the Customer and without incurring any liability to the Customer for any loss caused by such delay or cancellation.
- 3.4. Where a Customer offers for payment a cheque or cheques that are not honoured the Customer will be invoiced with any bank charges charged to Ultima by reason thereof.
- 3.5. If the payment of the price or any part thereof and off all other sums payable by the Customer is not made on the due date Ultima, without prejudice to its other rights hereunder shall be entitled to charge in addition to any monies due hereunder interest on the outstanding amount at the rate per annum of 4% above the base rate from time to time of Ultima's bankers calculated on a daily basis until payment is made.

### 4. TRANSFER OF PROPERTY

- The goods shall remain the sole and absolute property of Ultima as legal and beneficial owner and Ultima reserves the right to dispose of the goods until such time as payment in full for all the goods the subject of a contract to which these Conditions apply together with the full price of any other goods the subject of any other contract with Ultima has been received by Ultima.

### 5. RISK AND INSURANCE

- 5.1. Subject as hereinafter provided the goods are at the Customer's sole risk (and the Customer shall be under a duty to insure the goods to their full value) from the occurrence of the first point in time of any of the following events:
  - 5.1.1. The passing of property to the Customer as provided for in Condition 4 of these Conditions; or
  - 5.1.2. The physical delivery of the goods to the Customers' place of business by Ultima; or
  - 5.1.3. The physical delivery of the goods to the Customers' carrier or to an independent carrier for the purpose of transmission to the Customer or his nominee.
- 5.2. Ultima will be under no obligation to effect insurance of the goods once risk has passed to the Customer.

### 6. COLLECTION

- 6.1. Time of collection shall not be of the essence. Orders will be made available for collection as soon as reasonably practicable and Ultima reserves the right to deliver by instalments in such quantities as Ultima thinks fit.
- 6.2. Ultima shall endeavour to inform the Customer (or his nominated agent) as soon as the goods are ready for collection.
- 6.3. Where the goods are made available for collection in instalments, each instalment shall be construed as constituting a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply.
- 6.4. In the event of any failure to make the goods available for collection or delay making the goods available for collection, the Customer shall have no claim whatsoever against Ultima for any indirect or consequential loss or damage of any kind.
- 6.5. Without prejudice to any rights of Ultima hereunder, if the Customer shall fail to collect the goods seven days following the date on which Ultima informs the Customer that the goods are ready for collection the Customer shall pay to Ultima all storage and other costs of whatever nature incurred or arising from such failure.
- 6.6. Deviations in quantity or goods delivered from those stated in any contracts to which these Conditions apply shall not give rise to a right to reject on the part of the Customer and the Customer shall have no right to claim for damages for breach of contract but the Customer will only be obliged to pay at the contract rate for the goods delivered.

### 7. LIMITATION OF LIABILITY

- 7.1. The sole liability of Ultima in respect of any defect in or failure of any goods or vehicle supplied or for any shortage in quantity of goods delivered or for any loss, injury or damage attributable, directly or indirectly, thereto (other than in respect of death or personal injury resulting from the negligence of Ultima or its servants or agents) is limited to a period of 12 calendar months only from the date upon which the goods are delivered and limited to:
  - 7.1.1. making good by replacement (at the option of Ultima); or
  - 7.1.2. repairing defects or failures, which under proper use appear therein.

In addition Ultima must be reasonably satisfied that such defects or failure arose solely from the faulty design of the goods, defective materials used or workmanship. Provided however that no liability shall attach to Ultima:

- 7.1.3. unless Ultima is notified promptly in writing of the alleged defect or failure and in the case of shortage within 7 days of collection and a copy of the original purchase invoice is provided to Ultima;
- 7.1.4. if Ultima shall so require, the defective goods or part thereof are promptly returned to Ultima, carriage paid and in such case, the Customer shall collect the goods in accordance with clause 6 following repair, replacement or otherwise by Ultima;
- 7.1.5. no repair alteration or remedy is made to the goods or the vehicle without the express written permission of Ultima;
- 7.1.6. Ultima will not be liable in respect of the use of all or part of the goods or vehicle in any form of motorsport or for any purpose other than that for which they were intended; and Ultima will not be liable in relation to colourfastness or colour matching of original or replacement glass fibre panels.
- 7.2. If, without the prior written consent of Ultima, repairs or alteration are made to the goods or to the vehicle, Ultima shall be under no liability in respect of the goods and no allowance shall be made for any repairs or alterations so made.
- 7.3. The acceptance of liability contained in Clause 7.1 is given on the condition that the goods are used and the vehicle constructed in accordance with the manufacturers' instruction manual and without prejudice to the foregoing the use by the Customer of all parts recommended by Ultima and where the goods are not so used and the vehicle is not so constructed Ultima will be under no liability in respect of the goods.
- 7.4. All, if any, statements, recommendations, measurements, dimensions, specifications and advice given or made (whether before or after any contract to which these conditions apply) by Ultima or Ultima's servants or agents to the Customer or its servants or agents as to any matter relating to the goods or the vehicle are given without liability whatsoever on the part of Ultima and Ultima hereby represents and warrants to the Customer that no representation has been made to Ultima by or on behalf of the Customer before entering into any contract to which the conditions apply and that no representation made to Ultima by or on behalf of the Customer before entering into such contract has in any way induced Ultima to enter into such contract and the Customer makes and gives the like representations and warranties (mutatis mutandis) to Ultima as Ultima makes and gives to the Customer as above.
- 7.5. Ultima may in its absolute discretion refund the price of goods subject to the conditions contained in Clauses 7.1, 7.2 and 7.3 where such goods are in a saleable condition (to exclude special order Trim and Parts which are non-returnable). Such refunds will be subject to a 15% handling charge, which shall be deducted from the purchase price paid by the Customer as shown on the original invoice by Ultima to the Customer.
- 7.6. Except as provided in sub-paragraph 1 and 2 above, all representations, guarantees, undertakings, conditions or warranties, expressed or implied, statutory or otherwise in relation to the goods are hereby expressly excluded **provided always** that the statutory rights of the customer in the case of a consumer sale shall remain in full force and effect. Ultima will in no circumstances refund any monies paid by the Customer or replace any goods except in accordance with this Clause 7.
- 7.7. Without prejudice to the foregoing, Ultima shall in no circumstances be liable:
  - 7.7.1. for any indirect or consequential loss (including without limitation loss of production, loss of profit or liability to third parties) suffered or incurred by the Customer or others; or
  - 7.7.2. for any loss or damage in excess of the contract price for the goods or part thereof in respect of which a claim is made; or
  - 7.7.3. for any malfunction or non-function of any goods to the extent that this is caused by incorrect installation or maintenance strictly in accordance with Ultima's instructions.
8. **INDEMNITY**

The customer shall (and shall ensure that any third party to whom any goods may subsequently be supplied) comply with all instructions of Ultima and any other manufacturer in relation to the fitting, installation, service and use of the goods, and, notwithstanding such compliance, the Customer shall keep Ultima fully and effectually indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature and wheresoever arising, including, without prejudice to the generality of the foregoing, claims for damage to property and consequential loss (including loss of profit) which may be made against Ultima or which Ultima may sustain, pay or incur arising out of or in connection with the supply, fitting, installation or use of the goods.
9. **FORCE MAJUERE**

If Ultima is prevented from fulfilling any order within a reasonable time by reason of force majeure of any cause beyond its reasonable control including, without prejudice to the generality of the foregoing, war, threat of war, riots, civil commotion, act of God, government, terrorist activities, strikes, lockouts, industrial action, accidental technical problems with transportation, natural disaster, storm, flood, fire, earthquake, delay in delivery to Ultima of any goods or materials or interruption of transport, it shall be under no liability to the Customer and shall be entitled to its option (to be notified in writing to the Customer) either to cancel any contract to which these conditions apply or without any liability, to extend the time or times for delivery or otherwise performing such contract by a period at least equivalent to that during which such delivery or performance has been extended by any of the restrictions hereinbefore referred to.
10. **DEFAULT AND CUSTOMERS INSOLVENCY**

If there is any default or breach of any of the Customer's obligations hereunder or in any payments due under any contract of sale to which these conditions apply or if any distress, execution or other legal process is levied upon the Customer's property or if the Customer shall make or offer to make or offer any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order is presented or made against the Customer or, if a company, any resolution or petition to wind up shall be passed or presented or a receiver of all or any of its assets shall be appointed then (without prejudice to other remedies) in any such case Ultima may determine such contract or cancel any outstanding delivery or stop any products in transit and notwithstanding any other provisions.
11. **REMEDIES**

Termination of any contract to which the conditions apply for whatever causes shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum of money owing or to become owing by the other.
12. **ASSIGNMENT**

The Customer shall not assign or transfer or purport to assign or transfer any contract to which these conditions apply or the benefit thereof to any person whatsoever.
13. **ALL DEPOSITS**

All deposits are strictly non transferable.
14. **LAW**

Any contract to which these Conditions apply shall be governed by and construed in accordance with the laws of England.
15. **HEADINGS**

The headings shall not affect the meaning or interpretation of these conditions.
16. **CONSUMER SALES**

Nothing in these conditions shall affect the statutory rights of any person dealing with Ultima as a consumer.