

# STANDARD TRADING CONDITIONS

- 1 The following conditions (the "Conditions, each a "Condition") shall, unless otherwise agreed in writing by Martinspeed Limited (the "Company"), apply to all contracts (each a "Contract"), whether written or oral, entered into by the Company with any customer (a "Customer"). Each Condition shall be a separate and severable Condition and shall be deemed to be a Condition of each Contract. In the event that any of these Conditions is unenforceable, the remaining Conditions shall remain in force. The Company does not contract as a common carrier.
- 2 Each quotation by the Company shall be treated as an invitation to treat, may be withdrawn at any time until it has been accepted and shall automatically lapse after thirty days if not so accepted. The Customer's acceptance of a quotation must be in writing, which may include email and cannot be withdrawn once given without the Company's consent in writing. The Company shall not be bound until it has accepted the Contract in writing.
- 3 When accepting a quotation, the Customer must provide a written description and an accurate estimate of the value of the goods to which the Contract relates (the "Goods") in sufficient detail to enable the Company to make declarations for Customs and any other relevant purposes. The Company shall be under no liability to the Customer whatsoever for Goods delivered for transportation or storage, which are not included, or are inaccurately detailed, in the description provided to the Company pursuant to this Condition.
- 4 The Company reserves the right to recover from the Customer increases in third party costs including storage, transportation freight and insurance, which the Company is obliged to meet in carrying out the terms of the Contract and any additional cost arising from changes in rates of exchange (where appropriate) between the date of quotation and the date of the payment of such charges.
- 5 The Customer shall indemnify the Company against all taxes, duties and other imposts incurred by the Company in performing its duties under the Contract, and shall reimburse the Company on demand in respect of all such payments incurred by it. The Customer shall further indemnify the Company from and against any losses, damages, claims, expenses, imposts and fines and any other liability whatsoever and howsoever arising as a result of any misdescription of the goods provided pursuant to Condition 3.
- 6 Unless otherwise stated, all payments to the Company must be made in full in Sterling and are payable within thirty days of the date of the Company's invoice. Value Added Tax (where applicable) shall be added at the rate prevailing at the date of the invoice.
- 7 If the Customer fails to pay any amount due under a Contract on or before the due date for payment, the Company may, in addition to any other rights it may have, charge interest at the rate of 4% above the base rate of HSBC Bank plc from time to time from the due date for payment until the actual date of payment.
- 8 The Customer contracts with the Company as the legal owner of the Goods or as the authorised agent of the legal owner of the Goods; in which event the Customer warrants that it has the authority to accept these Conditions on behalf of the owner and full power to act, and give instructions to the Company, in relation to the Goods.
- 9 If during the course of any Contract title to the Goods is transferred, the Customer will procure that the transferee will accept the Goods subject to the Contract as if it were the Customer provided that (a) this shall not affect the Customer's continuing liability under the Contract; and (b) the Customer will indemnify the Company against any claim by the new owner of the Goods for actions properly taken by the Company in fulfilling the terms of the Contract.
- 10 The Company may at its discretion sub-contract any of the services it has contracted to carry out upon such conditions as seem reasonable to it. Any sub-contractor shall have the benefit of these Conditions and shall be under no greater or additional liability to the Customer than the Company.
- 11 In the absence of the specific written instructions of the Customer as to the transportation or handling of the Goods, or where such instructions cannot reasonably be implemented, the Company reserves the right at the Customer's risk to take such action or alternative action as it considers reasonable to protect the Goods.
- 12 Save where the Company has otherwise specifically agreed in writing, the Company will not arrange or be responsible for the storage of Goods except as may be necessary in the course of performing its duties under the Contract and then only at the Customer's cost and risk.
- 13 Save where the Company has otherwise specifically agreed in writing, or in accordance with a Contract for works by the Company which includes the same, the Customer will be solely responsible for packing, wrapping or otherwise protecting the Goods.
- 14 The Customer shall insure the goods during transportation and while in storage and, save as otherwise provided in these Conditions, the Company shall be under no liability to the Customer for loss or damage to the Goods during transportation or while in storage, howsoever such loss or damage arises.
- 15 The Company shall not be liable: a) for any loss or damage which is occasioned by a risk which is not insured; b) any loss in excess of the value declared pursuant to Condition 3; or c) any loss arising from the insurance policy being avoided because of misdescription of the Goods pursuant to Condition 3.
- 16 The Company will not undertake to transport or store perishable, dangerous, noxious or inflammable goods ("noxious goods"). If noxious goods are presented to the Company, the Customer shall indemnify and keep indemnified the Company, its servants, agents and sub-contractors against any loss or damage whatsoever and howsoever arising from their handling of the noxious goods and any liability arising, penalty, costs or charges relating thereto. The Company shall at its sole discretion have the power to destroy or dispose of such noxious goods as agent of the Customer.
- 17 All Goods delivered to the Company must clearly specify the address for delivery. In the event that the Company is unable for any reason beyond its reasonable control to deliver the Goods to the address specified, or if the address is incorrect, the Company shall seek further instructions from the Customer. The Customer shall be responsible for the Company's costs and charges for storing the Goods pending such further instructions and for carrying out those instructions. If the Company does not, within 21 days of sending a notice to the Customer seeking further instructions, obtain such further instructions from the Customer, then the Company may exercise the power of sale contained in Condition 19.
- 18 The Company shall have the right to retain all Goods (and documents relating thereto) under a particular and general lien and right of detention for all charges incurred pursuant to the terms of the Contract relating to the Goods and in respect of any other monies owing by the Customer to the Company. If the Customer fails to pay any monies due to the Company within 30 days of the Company's demand for payment, then the Company shall be entitled to invoke the power of sale set out in Condition 19 over the Goods in the Company's possession.
- 19.1 Subject to the provisions contained in Conditions 19.2 and 19.3, where the power of sale has arisen, the Company may sell the Goods at auction or otherwise. The Company shall use all reasonable endeavours to obtain the market value of the Goods sold. Payment or tender of the net proceeds to the Customer after deduction of all costs, charges and interest chargeable under the Contract, together with storage and disposal expenses in relation to the Goods, shall discharge the Company from all liability in respect of the Goods, their transportation and storage.
- 19.2 The Goods may not be sold unless the Company shall first have made reasonable efforts to notify the Customer of the Company's intention to sell the Goods. The Goods may then be sold unless, within a reasonable time (such time to be specified in the notice), the Customer shall have paid to the Company all outstanding charges (including interest thereon) and arranged for the Goods to be collected.
- 19.3 Pending the expiry of the notices referred to in Conditions 17, 19.1 and/or 19.2 and the disposal of the Goods, the Company shall at the expense, and on behalf, of the Customer arrange appropriate storage of the Goods.
- 20 Provided that the Company has used all reasonable efforts to minimise the loss, damage or delay, the Company shall not be liable for any loss, damage or delay in relation to the Goods which arises from any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as beyond the Company's reasonable control:
  - a act of God, explosion, flood, tempest, fire or accident;
  - b any consequence of war, act of foreign power, terrorism, insurrection, civil disturbance, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
  - c seizure or forfeiture under legal process;
  - d error, act, omission, misstatement or misrepresentation by the Customer or other owner of the Goods or any servant or agent of them;
  - e import or export regulation or embargoes;
  - f strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
  - g any special handling requirements for the goods not notified in writing to the Company;
  - h insufficient or inadequate packing, wrapping or protection of the goods or, where the goods are in store, the deterioration of such packing, wrapping or protection unless the Company has specifically agreed in writing to provide this service;
  - i insufficient or improper labelling or addressing of the Goods.
- 21 The Company shall not be liable for loss of, or damage to, the Goods, or delay or misdelivery, in any circumstance unless it can be proved that the same was caused by the wilful neglect or default, or a criminal act, of the Company or its servants, agents or sub-contractors.
- 22 The Customer shall inspect, or arrange for the inspection of, the Goods within 7 days of being notified of their delivery to the delivery address and the Company shall not be liable for:
  - a damage to the Goods or any part of them, unless within 3 days of inspection the Customer gives notice to the Company in writing specifying in detail the nature of the claim, and the Company is given an opportunity to inspect the damaged Goods within a reasonable any period after any claim has been notified to the Company; or
  - b loss of the Goods or any part of them, unless within 10 days of the anticipated date of delivery the Customer gives notice to the Company in writing specifying in detail the Goods that are missing.

- 23 a Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become aware of any event or occurrence alleged to give rise to such a claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible to comply with this time limit, and that he has made claim as soon as it was reasonably possible for him to do so.
- b Notwithstanding the provisions of sub-paragraph (a) above, the Company shall in any event be discharged of any liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.
- 24 Unless otherwise agreed in writing between the Company and the Customer, the liability of the Company shall be limited to:
- a in respect of loss or damage to the Goods whilst they are the responsibility of the Company (i) a maximum rate of £2,000 per tonne of the gross weight of the Goods lost or damaged; or (ii) £1,000 in respect of each Contract; or (iii) the market value of the Goods lost or damaged, whichever is the lowest amount;
- b in respect of delay (i) the amount of the Customer's bona fide loss; or (ii) the amount of the charges under the Contract, whichever is the lower amount.
- 25 Nothing in any Contract shall limit the Company's liability in respect of any claims:
- a for death or personal injury caused by its negligence and/or that of its employees, agents and/or sub-contractors;
- b resulting from any fraud including fraudulent misrepresentation; and
- c for which liability may not otherwise lawfully be limited or excluded.
- 26 Subject to Condition 25, in no event shall the Company be liable to a Customer under contract, tort including negligence, breach of statutory duty or otherwise for any indirect or consequential damages including:
- a loss of profits;
- b business interruption;
- c loss of sales;
- d loss of turnover;
- e loss of opportunity,
- even if the loss was reasonably foreseeable or the Customer has been advised of the possibility of such damages.
- 27 The Company reserves the right to perform the Contract in instalments, each one of which shall be deemed to be the subject of a separate contract. Any failure by the Company in relation to any one instalment shall not entitle the Customer to repudiate the Contract as a whole or any other instalments relating to it.
- 28 The waiver by either party of a breach or default of any of the Conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other Conditions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder, operate as a waiver of any breach or default by the other party.
- 29 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in the order from (or such other address or numbers as may have been notified) and any such notice, request, instruction or other document shall be deemed to have been served at the time of delivery (if delivered), upon the expiration of 48 hours after posting (if sent by post) and upon the expiration of 12 hours after dispatch (if sent by facsimile transmission).
- 30 The Conditions shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.
- Data Protection Notice
- 1 The Company may transfer information about a Customer to its financiers, who:
- a may store and process use, analyse and assess information about the Customer, including the nature of its transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with the Company;
- b from time to time, may make searches of the Customer's record at credit reference agencies where the Customer's record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches; on their computers, the computers of any associated company used by them and in any other way. This will be used by them for credit or financial assessments, in making payments, in recovering debts, for training purposes and preparing statistics. They may also use such information to prevent bad debts, fraud and money laundering;
- c from time to time, may make searches of the Customer's record at their credit reference agency where the Customer's record with such agency may include searches made and information given by other businesses; details of their searches will be kept by such agency but will not be seen by other organisations that make searches with that agency;
- d may give information about the Customer and its indebtedness to the following, for the purposes stated:
- v any associated company of theirs – to make credit or financial decisions and for statistical analysis;
- vi the Company's or their insurers for underwriting and claims purposes – to quote for and issue any policy or to deal with any claims;
- vii any guarantor or indemnifier of the Customer's or the Company's obligations to enable them – to assess such obligations;
- viii their bankers or any advisers acting on their behalf – to carry out services to them;
- ix any business to whom the Customer's indebtedness or the Company's arrangements with its financiers may be transferred – to facilitate such transfer;
- e may monitor and/or record any phone calls the Customer may have with them, for training and/or security purposes;
- f may make decisions about the Customer solely using an automated decision-making process, such as credit scoring. However, they will tell the Customer if they make a significant decision only using such a process. If the Customer's request is refused the Customer can then request a review of the decision by them, using other means. In the event that they transfer all or any of their rights and obligations under their agreement with the Company to a third party, may transfer information about the Customer to enable the third party to enforce their rights or comply with the obligations.
- 2 The Company will provide the Customer with details of its financiers on request, including a contact telephone number, if the Customer requires details of the credit reference agencies and other third parties referred to above from whom they obtain, and to whom they may give, information about the Customer. The Customer has a legal right to these details. The Customer also has a right to receive a copy of certain information which the Company's financiers hold about the Customer if the Customer applies to them in writing. However, a fee will be payable.
- 31 Temporary Admission Guarantee
- a Martinspeed can provide Temporary Admission Guarantees to commercial galleries domiciled outside the EU, subject to approval by the directors.
- b When the company is importing works of art onto its TA Guarantee, it is acting as the UK representative of the gallery.
- c Works of art can remain on the company's TA Guarantee for up to 4 months.
- d The Company has to have control of the works during shipping and transportation.
- e The purpose must be for importation with a view to a sale.
- f Martinspeed must be informed of the location of the work at all times.
- g The company has an exclusive right to complete all customs entries in relation to all works of art entered onto the company's TA Guarantee.
- h The company undertakes to provide safe carriage, installation and display around the works of art during display at a fair or gallery.
- i The company undertakes to provide security around the works of art during display at a fair or gallery in conjunction with the fair organisers and/or the gallery.