

CRANE[®] MERCHANDISING SYSTEMS

1. Definitions

- "The Company"** Means Crane Merchandising Limited registered in England under number 2360425 of Pipsmore Park, Bumpers Farm Industrial Estate, Chippenham, Wiltshire SN14 6NQ;
- "The Customer"** Means the person whose order for the Goods is accepted by the Company;
- "The Goods"** Means the goods or services (including any instalments of the goods, and any materials, spare parts or components whether comprised within such goods or supplied separately, or any part of them) which the Company is to supply to the Customer provided that in relation to spare or component parts, postage or packaging will not form part of the Goods;
- "The Conditions"** Means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing between the Customer and the Company in accordance with Condition 2.1;
- "The Contract"** Means any contract of which these conditions form part;
- "Excluded Goods"** Goods excluded from the warranty policy, (set out the in Conditions 13-15) listed in Schedule A.
- "Prepared Site"** A site to which the Customer requests delivery and where the Goods to be delivered by the Company can be placed in the required position without the use of specialised equipment or structural alterations to the site.

2. General

- 2.1** These Conditions shall apply to any agreement between the Company and the Customer for the sale of the Goods. All other terms and conditions and warranties whether express or implied statutory or otherwise are excluded save to the extent provided in these Conditions or in any written variation of these Conditions signed on behalf of both parties by their duly authorised representatives.
- 2.2** By making an order subsequent to receipt of these Conditions the Customer acknowledges that these Conditions shall prevail over any conditions inconsistent herewith purported to be imposed by the Customer or any previous course of dealing with between the Company and the Customer save to the extent of any variations referred to in Condition 2.1.

3 Publications and Representations

- 3.1** The Customer acknowledges that in entering into a Contract to purchase the Goods subject to the Conditions it has not relied upon any oral or written representations made by or on behalf of the Company save as set forth in writing and expressly included herein in accordance with Condition 2.1. The Company shall have no liability for any representation not so reduced to writing and so incorporated

4 Variations

The Company may at its discretion from time to time vary the design of the Goods from that advertised (including any spare parts supplied) without notice to the Customer provided that any such variations do not constitute material alterations to the Goods.

5 Specification

- 5.1** Copyright and any other right in all specifications, sketches, origination work and initial work including (but not limited to) negatives, positives, moulds, plates and cylinders whether or not produced on the instructions of or at the request of the Customer shall belong to the Company and if produced on the instructions of the Customer shall be treated as an order and the Customer shall indemnify the Company for the costs of production of any such specifications, sketches, origination work and initial work including (but not limited to) negatives, positives, moulds and cylinders.

- 5.2 If Goods are supplied according to the Customer's drawings or specifications, the Customer shall indemnify the Company against any claims and any costs, expenses or liability of the Company or action for any infringement of any patent, trade mark, registered design, copyright or other industrial property right of any third party on account of their manufacture or repair by the Company.
- 6 **Cancellation of Orders**
No order which has been accepted by the Company may be cancelled by the Customer except with the prior agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Company as a result of cancellation provided that no cancellation will be accepted of orders for Goods to special requirements of the Customer or not normally stocked by the Company if the manufacture or the obtaining by the Company of such Goods is in process of being completed.
- 7 **Prices**
- 7.1 **Goods will be supplied and invoiced at the price quoted in the Company's published price list current at the time of delivery and, where applicable, at the time of delivery of each instalment thereof less any discounts agreed by the Company in writing.**
- 7.2 **Unless otherwise agreed in writing between the Company and the Customer all prices given by the Company include delivery to an address agreed by the Customer and the Company.**
- 7.3 **The price for the Goods is exclusive of VAT which the Customer shall be additionally liable to pay to the Company.**
- 7.4 **The Company reserves the right to vary its prices from time to time without notice.**
- 8 **Delivery and Terms of Despatch**
- 8.1 **Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or if some other place for delivery is agreed by the Company, by the Company delivering the Goods on a date agreed between the Customer and the Company to a Prepared Site at a time convenient to the Company between 8:30 am and 5:00 pm Monday to Friday (inclusive) but excluding any bank or other holidays.**
- 8.2 **If the Company is to deliver the Goods to the Customer, the Customer will provide site survey forms of the Prepared Site, 5 days prior to the quoted delivery date.**
- 8.3 **The Company shall endeavour to deliver the Goods by the date and (if appropriate) time quoted for delivery but unless any quoted delivery date is stated in writing by the Company's representative to be binding such date is not guaranteed nor shall the time for delivery be of the essence.**
- 8.4 **The Company reserves the right to charge additional delivery charges for deliveries at specific times requested by the Customer or weekend deliveries or dedicated vehicle deliveries.**
- 8.5 **The Company shall be under no liability whatsoever for any loss or damage arising from any delay in despatch or delivery.**
- 8.6 **In the event that any delivery dates or times shall be expressed to be guaranteed or binding (due to payment of additional charges or otherwise) such delivery dates or times shall in any event be extended by such period as the Company confirms to be necessary to reflect unavoidable delay in delivery due to the Customer failing to supply information or materials required by the Company or any change of specification required by the Customer or if in the opinion of the Company the Customer fails to provide suitable transport or any other cause or unavoidable circumstances beyond the Company's control.**

8.7 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

8.8 If the Customer:

(a) fails to take delivery of the Goods; or

(b) fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Company's fault); or

(c) fails to provide site survey forms as required by Condition 8.3; or

(d) fails to inform the Company of other relevant information relevant to the delivery of the Goods; or

(e) fails to ensure that the delivery site is a Prepared Site as defined in Condition 1,

then without prejudice to any other right or remedy available to the Company, the Company may:

I. return the Goods undelivered and store the Goods until actual delivery and the Customer shall indemnify the Company for all reasonable storage, insurance and other costs incurred by the Company as a result of the Customer's failure to accept delivery of Goods; and/or

II. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract for the sale of the Goods or charge the Customer for any shortfall below the price under the contract for the sale of the Goods; and/or

III. leave the Goods as near as practicable (in the opinion of the Company) to the delivery site; and/or

IV. make a further delivery charge to the Customer if a second or further subsequent delivery is requested by the Customer.

9 Settlement Terms

9.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer with the price of the Goods on or at any time prior to notification to the Customer that the Goods are ready for delivery.

9.2 The Customer shall pay the price for the Goods in cleared funds not later than 30 days from the date of an invoice relating to the Goods provided that in respect of any order the Company shall be entitled to require the Customer to pay the price of the Goods in cleared funds prior to delivery. The time of payment shall be of the essence.

9.3 Save as otherwise agreed the Company may deliver the Goods by instalments and invoice each instalment in accordance with Condition 9.1. Where delivery is to be or may be fulfilled in separate instalments, each instalment shall be deemed to constitute a separate contract and payment shall be due accordingly.

9.4 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to charge the Customer interest at the rate of 2% per annum over the base rate for the

time being of National Westminster Bank Plc on the invoice price of the Goods from the due date of payment until the date of actual payment (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month).

- 9.5 The Customer shall not be entitled to make any deduction from the price of the Goods in respect of any alleged right of set-off or counterclaim.
- 9.6 The price of the Goods shall not include any returnable containers or pallets for which the Company reserves the right to charge the Customer.
- 10 Property and Risk
- 10.1 Risk of damage to or loss of the goods shall pass to the Customer:
(a) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are ready for collection; or in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery, the property in the Goods shall not pass to the Customer until the Company has received in cleared funds all monies owed by the Customer to the Company (including any interest due on monies owed) under this or any contract or otherwise.
- 10.3 Notwithstanding that title to the Goods shall remain with the Company the Goods shall be at the risk of the Customer as soon as they are delivered by the Company or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods. The Customer shall insure to their full value any goods wherein the risk but not the title has passed to it and indemnify the Company for loss, damage to or destruction of any such Goods. Any insurance monies paid to or for the account of the Customer in respect of Goods wherein the risk but not the title has passed to the Customer shall be held in trust for the Company.
- 10.4 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and labelled in such manner that they can at all times be identified as the Company's property.
- 10.5 Until such time as the property in the Goods passes, the Company permits the Customer to resell the Goods in the ordinary course of its business, provided that such permission may be revoked at any time by notice by the Company but the Customer shall hold the Company's part of proceeds of sale or otherwise of the Goods in a fiduciary capacity, and keep the Company's part of all such proceeds separate from any monies or property of the Customer and third parties in a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company and, in the case of tangible proceeds, properly stored, protected and insured.
- 10.6 Until such time as property in the Goods passes to the Customer, the Customer shall be bound at the request of the Company to deliver up the Goods to the Company and for such purpose the Company may at any time in its absolute discretion recover from the Customer those Goods being in the Customer's possession and for the purpose of such recovery the Company or its agents shall be entitled at any time to enter upon the Customer's premises or the premises of any third party where the Goods are stored to take repossession of the Goods held there unsold.
- 10.7 The Company shall be entitled, where the Goods have become fixed or attached to or incorporated within any other products, ("Assembled Goods") to detach the Goods from such Assembled Goods.

10.8 The provisions of this Condition 10 shall be without prejudice to the obligation of the Customer to purchase the Goods.

11 Lien

The Company shall have a general lien against the Customer in respect of any goods of the Customer being in the possession of the Company for amounts overdue under these Conditions. If any lien is not satisfied within 3 months of any payment becoming due the Company may sell such goods as agent for the Customer upon such terms as it sees fit and apply the proceeds towards the moneys due and the expenses of sale and shall upon accounting to the Customer for the balance remaining (if any) be discharged from all liability whatsoever in respect of such goods.

12 Claims for Damage/Shortage

12.1 In respect of Goods comprising spare or component parts which are not comprised within any other Goods, the Customer shall have no right to reject deliveries of the Goods on the grounds of variation of quantity from the Customer's order where such variation is not more than 10% or not less than 10% of the quantity of Goods ordered.

12.2 If the Company is responsible for arranging the carriage of the Goods to the Customer, any claim that the Goods are damaged or do not comply with their specification shall be notified in writing by the Customer to the Company within 3 working days of receipt of a Delivery Note or in the case of any alleged defect in the Goods which is not reasonably apparent on inspection, within 5 working days after the alleged defect was brought to the Customer's attention provided that the Company shall have no liability to the Customer in respect of loss or damage where the Customer has been responsible for arranging the carriage of the Goods.

12.3 If the Company is responsible for arranging the carriage of the Goods, any claim in respect of non-delivery of the Goods must be notified to the Company within 5 working days of receipt by the Customer of an invoice in respect of the Goods provided that the Company shall have no liability in respect of non-delivery when the Customer has been responsible for arranging the carriage of the Goods.

12.4 If delivery is not refused and the Customer does not notify the Company of any claim in accordance with the provisions of this Condition 12, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defects or failure, and the Customer shall be bound to pay the price for the Goods.

13 Warranty Policy

13.1 The benefit of this warranty policy is subject to the Customer complying with the warranty claim procedure set out in Condition 14.

13.2 Unless the Customer and the Company agree (in writing) an extended warranty period as set out in Condition 15, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for the appropriate period as set out below:

Machines – 12 months

New spares – 12 months

Service exchange spares – 3 months

All periods are calculated from the date of delivery.

13.3 The above warranty shall not apply in respect of:

13.3.1 any defect in the Goods arising from any instructions, drawing, design or specification supplied by the customer

13.3.2 any defect arising from fair wear and tear, damage in transit, wilful damage, negligence, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration, operation in excess of capacity, damage by product

contamination, premature failure caused by poor cleaning and/or maintenance, damage or failure of heating elements caused by scale or de-scaling, damage caused during return transit to the Company or repair of the Goods without the Company's approval;

13.3.3 in respect of electronic boards, damage caused by exposure to high voltages (ie PAT testing), static damage, damage caused by mishandling, repairs made by unauthorised personnel, returned parts packaged incorrectly (all boards must be returned in non-conductive anti-static packaging).

13.3.4 Goods which have been continued to be used by the Customer after any failure or defects of the Goods first became apparent;

13.3.5 any failure or defect of the Goods which was apparent upon receipt by the Customer of the Goods and which has not been notified to the Company in accordance with Condition 12.

13.3.6 any direct or indirect consequential liability, (whether for loss of profit, goodwill, business revenue or otherwise) loss, injury or damage (other than death or personal injury) arising through any such failure or defect.

13.3.7 any defect or failure of the Goods which is not reported to the Company in accordance with the warranty claim procedure set out in Condition 14.

13.3.8 Excluded Goods as defined in Condition 1 except if any defect or failure is due to a manufacturing defect.

13.4 **The above warranty is given for the benefit of the Customer only and shall not be assignable by the Customer to any third party without the Company's consent.**

13.5 **Where any claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with the warranty claim procedure set out in Condition 14, the Company shall, at its discretion and at its own expense, repair or replace the Goods (or the part in question) free of charge. The Company shall have no further liability to the Customer provided that Goods replaced under the terms of this warranty shall only have the benefit of the unexpired remainder of the warranty period set out in Condition 13.2 as it applied to the original Goods supplied.**

13.6 **If the company, within its discretion, considers a claim under a warranty to be invalid, the Company will advise the Customer. The Company reserves the right to dispose of any Goods to which this sub-condition applies which remain at the Company's premises after 30 days of such notification. In these circumstances, the Customer will lose all rights to claim under the Warranty Policy and to claim against the Company for loss or damage howsoever arising.**

14 **Warranty Claim Procedure**

14.1 **This condition should be read in conjunction with Condition 13.**

14.2 **If the Customer wishes to claim under the warranty policy, in respect of any Goods the Customer shall, within 30 days of the occurrence of the failure or defect becoming apparent, return the defective Goods to the Company carriage paid with the following information:**

- (a) Customer name;
- (b) Contact details/reference of customer;
- (c) Machine model and serial number;
- (d) Complete fault description;
- (e) Component description and/or part number;
- (f) Customer order number/reference number.

14.3 **If the Customer fails to provide, or provides inadequate, information required under Condition 14.2 the Company will request such information from the Customer by fax. The Customer must reply to such fax with the required information within 7 days.**

- 14.4** In the event of failure to provide the information required under Conditions 14.2 or 14.3 the Company reserves the right to dispose of the Goods. In these circumstances the Customer will lose all rights to claim under the Warranty Policy and to claim against the Company for loss or damage, howsoever arising.
- 15** **Extended Warranty Policy**
- 15.1** The Customer and the Company may agree to extend the duration of the warranty periods set out in Condition 13.2.
- 15.2** Any agreement to vary the warranty period must be set out in writing and signed on behalf of both parties by their duly authorised representatives.
- 15.3** The duration of any extended warranty period agreed in accordance with Condition 15.1 may be reduced, removed, or revoked in the Company's absolute discretion and without notice.
- 15.4** Except for the duration of the warranty period, all other terms applicable to warranties under Conditions 13 and 14 will apply to warranties with extended warranty periods.
- 16** **Liabilities**
- 16.1** **Except in respect of death or personal injury caused by the Company or its servants' negligence, or to the extent that the exclusion of the Company's liability is precluded by the Unfair Contract Terms Act 1977, as from time to time amended, the obligations of the Company under Conditions 12, 13, 14 and 15 shall be accepted by the Customer in lieu of and to the exclusion of all conditions and warranties express or implied by statute or otherwise and the Company shall not be liable to the Customer for any consequential loss or damage (whether for loss of profit, goodwill, business revenue or otherwise) costs, expenses or any other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the Goods or their resale by the Customer.**
- 17** **Force Majeure**
- The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 18** **Termination**
- 18.1** **The following shall be treated as a breach of this Contract and the Company shall be entitled without prejudice to its other rights and remedies to treat any such breach as a repudiation of the Contract and to determine the same accordingly:**
- 18.1.1** any failure of the Customer to take delivery of the Goods when required to do so or any failure of the Customer to remedy any material breach of its obligations under these Conditions with the Company within 30 days of written notice from the Company specifying the breach and the remedial action required;
- 18.1.2** the levying of any distress, execution or other legal process upon any of the Customer's assets;
- 18.1.3** any arrangement or composition between the Customer and its creditors (whether generally or pursuant to proposals made under Section 1 of the Insolvency Act 1986) or any act of bankruptcy of the Customer or (if the Customer is a corporation) the passing of a resolution or the making of an order for the winding up of the Customer or the making of any administration order in respect of the Customer or the appointment of any liquidator, administrative receiver, judicial administrator or receiver or manager in respect of any parts of the undertaking or assets of the Customer.
- 18.2** **The Company shall be entitled, as an alternative to termination of Contract on account of any of the matters specified in Clause 16 to suspend the performance by the**

Company of its obligations under the Contract and such suspension shall not constitute a termination of the Contract and the Customer shall have no rights against the Company by reason of such suspension. Suspension of the Contract shall not prejudice the Company's rights subsequently to terminate the Contract.

19 Notices

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business and shall be deemed to have been received by the party to whom it was sent:
(a) if sent by registered post 7 days after the date of the registration receipt provided by the relevant postal authority; and
(b) if sent by telex or facsimile upon transmission.

20 Data Protection

From time to time the Company will supply customer details to Credit Reference Agencies or Independent Marketing Agencies. We reserve the right to process your information for this purpose. By entering into these Conditions you consent to such use.

21 Miscellaneous

21.1 No waiver by the Company of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of them.

21.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of these Conditions and the remainder of the provisions in question shall not be affected thereby.

21.3 The Contract between the Company and Customer and all disputes arising under these Conditions shall be governed by English law and be subject to the exclusive jurisdiction of the courts of England and Wales.

Schedule A

- Contact Components
- Water Filters
- Hygiene Components (Mixing Systems)
- Ingredient Canisters
- All Seals including Valve Repair Kits
- Silicon Pipes and Hosing
- **Electrical Issues**
- Fuses
- Light bulbs
- Plastics
- Drip trays
- Brewer parts
- Vend station
- Keypad and graphic trims
- Vend doors
- Others
- Glass panels
- Fasteners
- Snack Machine Spirals