

## WINMAU DARTBOARD COMPANY LTD CONDITIONS OF SALE

**BACKGROUND:** The following are the Conditions of Sale of Winmau Dartboard Company Ltd ('Winmau') of South Road, Bridgend Industrial Estate, Bridgend, CF31 3PT, UK (registered in England and Wales with company number 00624584). Winmau concludes the Contract for the sale of goods only subject to these Conditions and the Buyer seeking to be supplied with goods by Winmau accepts these Conditions of Sale shall govern the relations between the Buyer and Winmau.

The Buyer's attention is drawn in particular to the provisions of clause 9.

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Buyer:** the person or firm who purchases the Goods from Winmau.

**Conditions of Sale:** the terms and conditions set out in this document.

**Contract:** the contract between Winmau and the Buyer for the sale and purchase of the Goods in accordance with these Conditions of Sale.

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods.

**Order:** the Buyer's order for the Goods, as set out in the Buyer's purchase order form or as agreed in writing between the parties.

#### 1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes emails.

## 2. Basis of contract

- 2.1 These Conditions of Sale apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions of Sale. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Winmau issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions of Sale.
- 2.5 Any samples, drawings, or advertising produced by Winmau and any illustrations contained in Winmau's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by Winmau shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

## 3. Goods

- 3.1 The Goods are described in Winmau's catalogue or as described in writing between the parties.
- 3.2 Winmau reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

## 4. Delivery

- 4.1 Winmau shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Goods shall be:
- (a) collected by the Buyer from Winmau's premises at **South Road, Bridgend Industrial Estate, Bridgend, CF31 3PT, UK** or such other location as may be advised by Winmau prior to delivery within 14 Business Days of Winmau notifying the Buyer that the Goods are ready; or
  - (b) delivered by Winmau to the location set out in the Order or such other location as the parties may agree at any time after Winmau notifies the Buyer that the Goods are ready,
- (Delivery Location).**

- 4.3 Delivery is completed:
- (a) where the Goods are collected by the Buyer from the Delivery Location, on the completion of loading of the Goods; or
  - (b) where the Goods are delivered by Winmau to the Delivery Location, on the completion of unloading of the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence, unless previously agreed by Winmau in writing. Winmau shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide Winmau with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Winmau fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Winmau shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide Winmau with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Buyer fails to collect the Goods within 14 Business Days of Winmau notifying the Buyer that the Goods are ready, or fails to accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or Winmau's failure to comply with its obligations under the Contract, Winmau shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.7 Winmau may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 4.8 Where delivery is made outside of the UK, the Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as required from time to time and, if required by Winmau, the Buyer shall make those licences and consents available to Winmau prior to the relevant shipment.

## **5. Quality**

- 5.1 Winmau warrants that on delivery the Goods shall:
- (a) conform with their description;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by Winmau.
- 5.2 Subject to clause 5.3, if:
- (a) the Buyer gives notice in writing to Winmau within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

- (b) Winmau is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by Winmau) returns such Goods to Winmau's place of business at the Buyer's cost,

Winmau shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Winmau shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Buyer failed to follow Winmau's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Winmau following any drawing, design or Specification supplied by the Buyer;
- (d) the Buyer alters or repairs such Goods without the written consent of Winmau;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Winmau shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Winmau.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2 Title to the Goods shall not pass to the Buyer until Winmau receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.

6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as Winmau's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (d) notify Winmau immediately if it becomes subject to any of the events listed in clause 8.1; and
- (e) give Winmau such information relating to the Goods as Winmau may require from time to time.

6.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy Winmau may at any time:

- (a) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## **7. Price and payment**

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Winmau's published price list in force as at the date of delivery.

7.2 Winmau may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Winmau's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give Winmau adequate or accurate information or instructions.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to Winmau at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

7.4 Winmau may invoice the Buyer for the Goods on or at any time after the completion of delivery.

7.5 The Buyer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Winmau. Time for payment is of the essence.

7.6 All payments shall be made in pounds sterling (£).

7.7 If the Buyer fails to make any payment due to Winmau under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

7.8 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Winmau may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Winmau to the Buyer.

## **8. Termination**

8.1 Without limiting its other rights or remedies, Winmau may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Buyer's financial position deteriorates to such an extent that in Winmau's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, Winmau may suspend provision of the Goods under the Contract or any other contract between the Buyer and Winmau if the Buyer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or Winmau reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, Winmau may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Buyer shall immediately pay to Winmau all of Winmau's outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **9. Limitation of liability**

9.1 Nothing in these Conditions shall limit or exclude Winmau's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective Goods under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for Winmau to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) Winmau shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Winmau's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

## **10. Force majeure**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 30 days written notice to the affected party.

## **11. Intellectual property rights**

11.1 The Buyer acknowledges that:

- (a) the Intellectual Property Rights are Winmau's (or its licensor's) property;
- (b) nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights. Winmau asserts its full rights to control the use of its trade marks within the EEA and the Buyer shall assist Winmau as required in preventing parallel importers from diluting Winmau's rights; and
- (c) any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of Winmau or any other owner of the trade marks from time to time.

11.2 The Buyer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods.

11.3 The Buyer shall not use or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Buyer owns or claims rights in anywhere in the world.

- 11.4 If at any time it is alleged that the Goods infringe the rights of any third party or if, in Winmau's reasonable opinion, such an allegation is likely to be made, Winmau may at its option and its own cost:
- (a) modify or replace the Goods in order to avoid the infringement;
  - (b) procure for the Buyer the right to continue using the Goods; or
  - (c) repurchase the Goods at the price paid by the Buyer, less depreciation at the rate Winmau applies to its own equipment.

- 11.5 The Buyer shall promptly and fully notify Winmau of:
- (a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Buyer's notice; and
  - (b) any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods infringes the rights of any person.

- 11.6 The Buyer agrees (at Winmau's request and expense) to do all such things as may be reasonably required to assist Winmau in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 11.5.

- 11.7 In the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of any Intellectual Property Right connected with the Goods, Winmau shall defend the Buyer at Winmau's expense, subject to:
- (a) the Buyer promptly notifying Winmau in writing of any such claim, proceeding or suit; and
  - (b) Winmau being given sole control of the defence of the claim, proceeding or suit,

and provided that Winmau shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except Winmau or its authorised representative, or out of use or combination of the Goods with Goods or third party materials not specified or expressly approved in advance in writing by Winmau, or where the claim, proceeding or suit arises from Winmau's adherence to the Buyer's requested changes to the Specification or from infringing items of the Buyer's origin, design or selection.

- 11.8 Winmau shall reimburse the Buyer with an amount equal to any reasonable cost, expense or legal fees incurred at Winmau's written request or authorisation and shall indemnify the Buyer against any liability assessed against the Buyer by final judgement on account of an infringement described in clause 11.7.

## **12. General**

### **12.1 Assignment and other dealings.**

- (a) Winmau may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Winmau.



**12.2 Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**12.3 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.4 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.5 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**12.6 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**12.7 Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

**12.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**12.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.