

TERMS AND CONDITIONS

1 Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 '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.
- 1.3 'Delivery Date' means the date specified by the Seller when the goods are to be delivered.
- 1.4 'Goods' means the articles, which the Buyer agrees to buy from the Seller.
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT.
- 1.6 'Seller' means BATTERIES DIRECTGOLF LIMITED of – Unit 4 Swannington Road, Cottage Lane Ind Est, Broughton Astley, Leicestershire, LE9 6TU.

2 Conditions applicable

- 2.1 These Conditions are the only conditions upon which the seller is prepared to deal with the Buyer and these conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document⁷.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 These conditions embody the entire understanding of the parties and supersede any verbal statements. The Seller's employees or agents are not authorized to make any representations concerning the goods unless confirmed on behalf of the seller by a Director in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breaches of any verbal statements (other than fraudulent misrepresentations), which are not so confirmed in writing.

3 The Price and payment

- 3.1 The Price shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's price list current at the date of acceptance of the order. All quoted prices are valid for 30 days only. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due (without any deduction or set off) within 30 days of the date of the date of the invoice. Time for payment shall be of the essence.
- 3.3 The Seller may be giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract within 5 days of any such notice from the Seller.
- 3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Natwest Bank Plc. base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - 3.5.1 suspend or cancel deliveries of any articles due to the Buyer; and/or
 - 3.5.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
 - 3.5.3 re-sell the goods to any third party
- 3.6 Any queries regarding the price of the goods must notified to the Seller in writing
Within 7 days of the price being notified otherwise all disputes with regard to the price will be null and void
- 3.7 All overdue accounts will be passed to a debt collection agency and a surcharge of
25 pounds plus all costs or expenses incurred in recovery will be added to the sums due.
- 3.8 In the event of cancellation of any order the Seller reserves the right to charge the Buyer with all costs incurred by the Seller

4 The Goods

The quantity and description of the Goods shall be as set out in the Seller's acknowledgment of order and/or as set out on the delivery note.

5 Warranties and liability

- 5.1 **The Buyer shall inspect the Goods immediately and thoroughly upon delivery and any discrepancies or apparent defects must be marked on both copies of the delivery note. The word unexamined put on a delivery note will not be accepted, as it is the Buyers contractual obligation to inspect the goods immediately and thoroughly upon delivery. Any alleged defect, shortage in quantity, damage or failure to comply with description or sample must be notified to the Seller within 48 hours of delivery and confirmed in writing within 7 days of delivery. In the event of any complaint being properly notified the Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions or if at the Buyers request goods are left at a point where no authorized person accepts delivery the Goods shall be conclusively presumed to be in accordance with the contract and free from any shortage defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods and shall have no claim against the Seller.**

The Buyer shall notify the Seller of any non-delivery of a whole consignment within 48 hours of the date of anticipated delivery. Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons indicated on the advice sheet.

- 5.3 If the Goods are not in accordance with the contract for any reason the Seller shall be entitled to replace or repair (or a proportionate part of the price) or make a further delivery to make up the deficiency.
- 5.4 Except in respect of death or personal injury caused by the Seller's negligence or in respect of breach of a statutory right of a buyer dealing as a consumer the Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price.
- 5.5 The Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 5.6 All warranties and conditions whether implied by statute or otherwise are excluded from this contract Provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer.
- 5.7 The Seller shall not be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

5.8 GUARANTEE

5.8.1 Providing that goods are returned to the Seller using the original carton and label supplied when the goods were delivered and provided that the goods have not been abused the Seller will replace any defective goods within 12 months of purchase free of charge.

5.8.2 On the return of any goods to the Seller in accordance with 5.8.1 a discharge test will be carried out by the Seller to determine whether the goods are faulty useable or have been subject to abuse. If the goods are useable or have been subject to abuse the original goods will be returned to the Buyer and the buyer will be liable to the carriage charges incurred. If the goods are faulty they will be replaced subject to compliance with clause 5.8.1.

- 5.9 The Buyer is responsible for ensuring that the Buyer's equipment is in 100% good condition and that the charger is correct for the "cyclic" battery they are using.

6.0 Delivery of the Goods

- 6.1 The Buyer shall make all arrangements necessary to collect or take delivery of the Goods as soon as the seller notifies the Buyer they are ready for collection.
- 6.2 Any dates quoted for delivery of the goods are approximate business estimates only and the Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) howsoever caused.
- 6.3 Time for delivery shall not be of the essence.
- 6.4 Where delivery of the goods is to be made by the Seller in bulk the Seller reserves the right to deliver up to 5% more or 5% less than the quantity ordered with an appropriate adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.5 The Seller reserves the right to deliver in installments and each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more installments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

7 Acceptance of the Goods

- 7.1 The Buyer shall be deemed to have accepted Goods 48 hours after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject Goods, which are not in accordance with the contract.

8 Title and risk

- 8.1 The Goods shall be at the Buyer's risk as from delivery.
- 8.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
 - 8.2:1 the Buyer shall have paid the Price plus VAT in full; and
 - 8.2:2 no other sums whatever shall be due from the Buyer to the Seller.
- 8.3 Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 8.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. The Buyer grants to the Seller an irrevocable license to enter upon any premises owned occupied or controlled by the Buyer and an irrevocable license to extract the goods from any other property which has been mixed with the goods on the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.9 If the Buyer shall allow the goods to be incorporated into or be used in the manufacture of other goods before the full price is paid to the Seller the property in the whole of those new goods shall be that of the Seller who shall be entitled to take possession of the new goods and the Seller is hereby granted an irrevocable license for the purpose of recovering the new goods. The Seller shall be entitled to sell the new goods and shall be entitled to retain from the proceeds of sale a sum equal to the amount outstanding to the Seller in respect of the price of the goods and shall pay the balance of the sale proceeds to the Buyer
- 8.9 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9 Proper law of contract

This contract is subject to the law of England and Wales and to the non-exclusive jurisdiction of the Courts of England and Wales.

Note: The Seller's prices are calculated on the basis that these conditions will apply. Buyers requiring prices to be quoted on a different basis should inform the Seller.

DATE _____

POSITION IN COMPANY _____

AUTHORIZED SIGNATURE _____

PRINT NAME _____

FULL COMPANY NAME AND ADDRESS
