

1. ACCEPTANCE AND AMENDMENT

- 1.1 These General Conditions shall apply to all tenders, offers, quotations, acceptances, agreements and deliveries relating to the sale of goods by the Seller and the Buyer shall be deemed to assent thereto.
- 1.2 No other conditions or modifications of these Conditions shall be binding on the Seller unless an authorised official of the Seller agrees thereto in writing making express reference as to the amendment of these Conditions and the Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Conditions:
"Contract" means the contract for the sale and purchase of the Goods (in which these Conditions apply).
"Goods" means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply pursuant to or in connection with the Buyer's purchase order and the Contract.
"Buyer" means the person, firm or company placing an order with the Seller.
- 2.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

3. SPECIFICATIONS

- 3.1 All descriptions, specifications, drawings, dimensions, capacities, prices and other data quoted or submitted by the Seller or included in any sales literature, quotation, price list, invoice or other document or information issued by the Seller are to be deemed approximate only (except where stated in writing to be exact) and subject thereto none of such items or any part thereof shall form part of the Contract (other than as approximations).
- 3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 3.3 The Seller reserves the right to make any changes in the specification of Goods which are required to conform with any applicable safety or other legal requirements or which do not materially affect their quality or performance.

4. ORDERS

- 4.1 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of an authorised official of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 4.2 The Seller reserves the right to sell Goods to and deal with any other customer whatsoever.

5. PRICES

- 5.1 Unless otherwise agreed in writing or stated on the Seller's quotation or acknowledgement of order the price payable by the Buyer for each delivery of Goods shall be the Seller's list price ruling at date of despatch.
- 5.2 Until an order has become binding on the Seller all prices are subject to change without prior notice.
- 5.3 After an order has become binding on the Seller, all prices will have VAT added at appropriate rate and are subject to increase to reflect increases from time to time in list prices and any increases in costs to the Seller prior to delivery, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

6. PAYMENT

- 6.1 Unless otherwise agreed in writing or stated on the Seller's quotation or acknowledgement of order, the net invoice amount shall become due for payment by the Buyer 30 days after the date of invoice or (if earlier) upon the occurrence of any circumstances whereunder, pursuant to the Contract or these Conditions, payment falls immediately due. The time of payment shall be of the essence of the Contract.
- 6.2 The Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment of monies due and payable under the Contract and under any other contract between the Seller and the Buyer.
- 6.3 If the Buyer defaults in any payment the Seller may in addition to exercising the right contained in Condition 6.2 above suspend work, delay or withhold delivery or cancel the Contract or suspend work, delay or withhold delivery under or cancel any other contract between the Seller and the Buyer and retain any progress payments or payments on account already received under the Contract or under any other contract between the Seller and the Buyer.
- 6.4 To the extent that the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a receiver is appointed over any of the property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business the Seller shall be entitled to suspend work, delay or withhold delivery under or cancel the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable.

7. DELIVERY

- 7.1 Time of delivery is not of the essence of the Contract and may not be made so by notice and any time or date specified by the Seller as the time at which or the date on which the Goods will be delivered is given and intended as an estimate only and the Seller shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.
- 7.2 The Seller reserves the right to make delivery by instalments, unless otherwise expressly agreed in writing. The period during which delivery by instalments may be made and the quantity of Goods delivered in each instalment shall be in the Seller's discretion.
- 7.3 Where Goods are delivered in instalments, each delivery shall constitute a separate contract (in which these Conditions apply (*mutatis mutandis*) and failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as repudiated.
- 7.4 Where a Contract provides for delivery by instalments at unspecified times over a period the Buyer shall order all Goods within and accept all deliveries thereof within [3] months from the date of the first delivery or availability date, whichever is the sooner. If the Buyer fails to so order the Goods or accept all such deliveries within such time limit the Seller shall be entitled to invoice the full balance of the price of the Goods remaining to be ordered and delivered, the cost of which shall immediately become due.
- 7.5 Where a Contract provides for delivery by instalments at specified times or intervals the Buyer shall accept each delivery at the time specified. If the buyer refuses or is unable to accept any such delivery the Seller may terminate all future deliveries and treat the Contract as repudiated and claim damages from the Buyer for breach of contract.
- 7.6 Delivery will be made in such packs as may be appropriate for delivery of the Goods. Subject thereto delivery of more or less than the quantity of the Goods due for delivery or the inclusion therewith of goods of a different description not included in the Contract shall not entitle the Buyer to reject the goods delivered.
- 7.7 Notwithstanding any express agreement as to the date of delivery the Seller shall be entitled to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making or obtaining any Goods or materials or parts or components or services therefore or making delivery of Goods by strikes, lockouts, trade disputes or labour troubles or any cause beyond the Seller's reasonable control. During any of the foregoing events the Seller's obligations shall be suspended until such events cease or until the Seller cancels delivery (as the case may be) and the Seller shall not be required to obtain elsewhere in the market goods with which to replace or permit it to produce Goods delivery of which has been postponed or cancelled as a result of any of the said events. In the event of cancellation, the Seller shall be paid pro rata for Goods delivered or work done to the date of cancellation.
- 7.8 If the buyer fails to take delivery of Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller (including its right to payment) the Seller may:-
(i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) or storage; and
(ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- and the Buyer shall indemnify the Seller in full against all losses, damages, charges and expenses incurred by the Seller as a result of the Buyer's said failure to take delivery or give adequate delivery instructions to the extent that the Sellers said losses, damages, charges and expenses are not covered by any payments made or monies obtained under (i) or (ii) above.

8. BUYER'S OBLIGATIONS AND CLAIMS ON DELIVERY

- 8.1 The Buyer will:-
(i) examine Goods carefully within [5] days of taking delivery;
(ii) notify the seller (and any carrier for the Seller) in writing within [7] days of taking delivery of any error in quantity or description of Goods delivered or that they were mixed with others not included in the contract or of any damage to goods revealed by such examination or which ought reasonably to have been revealed by such examination and not caused since delivery was taken.
- 8.2 Failure to make any notification in accordance with paragraph (ii) of Condition 8.1 which examination under (i) above should have enabled the Buyer to make shall constitute a waiver by the Buyer of all claims based on or relating to facts which such examination should have revealed.

9. RISK

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

- (i) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- (ii) In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery (except where goods are sold f.o.b.) or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

Delivery to a carrier or to any person firm or company on the Buyer's behalf shall constitute delivery to the Buyer.

9.2 Where Goods are sold f.o.b. all risk of damage or loss in transit shall pass to the Buyer when the Goods are placed on board ship, and the Seller shall be under no obligation to give to the Buyer the Notice specified in Section 32(3) Sale of Goods Act 1979.

10. TITLE TO GOODS

10.1 Property in the Goods shall remain with the Seller until payment in full has been received by the Seller:

- 10.1.1 for the Goods;
- 10.1.2 for all other goods ordered by or delivered to the Buyer; and
- 10.1.3 for any monies due from the Buyer to the Seller on any account whatsoever

10.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate and unmixed from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property. Until such time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business. The Buyer shall account to the Seller for the proceeds of sale of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protected and insured.

10.3 If the Buyer:-

- 10.3.1 has any distress or execution levied against the Goods or any of its assets; or
- 10.3.2 has a bankruptcy order made against it; or
- 10.3.3 goes into liquidation whether voluntary or compulsory (except solely for the purposes of a reorganisation) or
- 10.3.4 makes an arrangement with its creditors; or
- 10.3.5 has an administrator or administrative receiver appointed over any of its assets; or
- 10.3.6 pledges or in any way charges by way of security for any indebtedness any of the Goods which remain the property of the seller; or
- 10.3.7 receives a written demand from the Seller to pay overdue sums owed to the Seller then the Buyer's consent from the Seller to do the acts referred to in condition 10.2 shall determine and be deemed to have determined forthwith and the Buyer shall not thereafter sell or use the Goods or any other goods belonging to the Seller, save with the consent in writing of the Seller, until the Seller has been paid in full in accordance with Condition 10.1

10.4 The Buyer shall ensure that in the event of any re-sale of the Goods in accordance with Condition 10.2 the contract of sale between the Buyer and its purchaser shall contain retention of ownership clause which will have the same effect for the Buyer as Condition 10.1 has for the Seller.

10.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so, forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

10.6 Where the property in the Goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing to the Seller in relation to the Goods notwithstanding Section 49 of the Sale of Goods Act 1979.

11. WARRANTIES AND LIABILITY

11.1 Subject to the terms and conditions set out in this Condition 11, the Seller warrants to the Buyer that the Goods will correspond with their specification at the time of delivery.

11.2 The Warranty in Condition 11.1 above is given by the Seller subject to the following conditions:-

- (i) the seller shall be under no liability in respect of any defect in the quality or condition of the Goods or their failure to meet specification unless the Buyer's claim is notified to the Seller within a reasonable time after the date upon which such defect or failure was or should reasonably have been discovered and the allegedly defective Goods are returned at the risk and expense of the Buyer to the Seller forthwith;
- (ii) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing or specification supplied by the Buyer;
- (iii) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, misuse or alteration or repair of the Goods without the Seller's approval;

(iv) the Seller shall be under no liability under such warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

(v) such warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller

11.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by law are excluded to the fullest extent permitted by law.

11.4 Where any valid claim in respect of any Goods or part(s) thereof based on any defect in the quality or condition of the Goods or part(s) thereof or their failure to meet specification or perform is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair or replace the Goods (or the part(s) in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

11.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

12. TRADE MARKS, PATENTS AND OTHER INDUSTRIAL RIGHTS

12.1 If any claim is made against the Buyer alleging that Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then

- (i) the Buyer shall forthwith notify the Seller with full particulars; and
 - (ii) the Seller or its suppliers or licensors (as case may be) shall be at liberty at their expense to conduct all negotiations and / or litigation in respect thereof and (if necessary) in the name of the Buyer; and
 - (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any proceedings without the consent of the Seller (which shall not be unreasonably withheld or delayed).
- and if as a result of such negotiations or litigation the Buyer shall be unable to use the Goods substantially for purpose for which they were bought the Seller shall take them back and refund the price thereof and such refund shall be in full satisfaction of all claims by the Buyer against the Seller.

12.2 The Buyer shall indemnify the Seller against all actions costs (including cost of defending legal proceedings) claims proceedings and demands in respect of any infringement or alleged infringement by the Seller of patent rights registered design copyright design rights or other industrial rights attributable to the Seller complying with any special instructions from or requirements of the Buyer relating to the Goods.

13. NOTICES

Any notices given hereunder must be in writing and may be effected by personal delivery, by facsimile or by prepaid first class post and (subject, in each case, to proof that such notice was properly addressed and despatched) shall be deemed to have been duly given or made if delivered by hand upon delivery at the address of the relevant party, if transmitted by facsimile at the time of transmission (provided a confirmatory notice is sent by prepaid first class post) and if effected by post 48 hours after the date of posting.

14. NO ASSIGNMENT

The contract shall be personal to the Buyer and shall not nor shall any rights under it be assigned by the Buyer without the written consent of the Seller.

15. NO WAIVER

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16. GOVERNING LAW

The Contract (and these Conditions) shall be governed by and construed in accordance with the laws of England, and the parties hereby submit to the exclusive jurisdiction of the English Courts

17. INVALIDITY

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