

Conditions of Sale

All goods are sold subject to the following conditions of sale which shall prevail over any and all terms or conditions referred to in the Buyer's order or in correspondence or elsewhere unless specifically agreed in writing by both parties and any conditions or stipulations to the contrary are hereby excluded.

1. Formation of Contract

- (a) Quotations do not constitute an offer, and no contract shall result until the Buyer has placed an order and this has been accepted by the Seller (orders from confirming and merchant houses are accepted on the fundamental conditions that they act as principals and not as agents).
- (b) All oral acceptances of order shall be deemed to have been made subject to these conditions of sale.
- (c) All orders and any variations to orders must be confirmed by the Buyer in writing otherwise the Seller shall not be liable for any consequent errors or misunderstandings.
- (d) No assurance given or terms discussed before order or arising from a previous course of conduct between the parties shall take effect as part of this contract or as a collateral warranty or contract, nor shall they bind the Seller in any other way, unless repeated in the Seller's quotation or set out clearly in the Buyer's written order. Provided that this provision shall not prevent these conditions of sale being incorporated into any contract between the parties by virtue of any course of dealing between them.

2. Prices

- (a) The Seller reserves the right by notice given at any time before delivery to vary the price of goods if there is any increase or decrease in the total cost of the goods to the Seller arising from any cause beyond the reasonable control of the Seller provided that if any such price variation shall increase the price of the goods by more than ten per cent the Buyer may by written notice to the Seller cancel the undelivered balance of the contract.
- (b) If manufacture or despatch of the goods is delayed at the Buyer's request or through lack of adequate instructions from the Buyer the Seller reserves the right to increase the price of the goods to that ruling at the date of despatch and to claim for loss, storage and expenses incurred as a consequence of such delay.

3. Cancellation

Save as provided in sub-clause 2(a) hereof cancellation of accepted orders by the Buyer will be allowed only at the Seller's discretion and the Seller may charge for all work done and expenses incurred in relation thereto up to the full price of the goods. The Buyer shall be responsible for obtaining all necessary licences and permission for the importation of the goods into the country of destination.

4. Payment

- (a) Unless otherwise specified by the Seller, payment of any invoice is due by the last day of the month following the month in which the invoice is issued.
- (b) In addition to its other remedies, the Seller reserves the right to charge interest on delayed payments from the due date of settlement on a day to day basis at National Westminster Bank's base rate from time to time in force plus four per cent.

5. Despatch of Goods

- (a) Unless it is expressly agreed that time shall be of the essence of the contract all despatch and delivery dates or times quoted are quoted in good faith but are to be treated as estimates only. Subject to sub-clause (b) hereof where it is expressly agreed that time shall be of the essence of the contract the Buyer shall nevertheless not be entitled to treat the contract as terminated by reason of any failure of the Seller to comply with any despatch or delivery or times by the Seller will accept liability for the loss, damage or expense caused by the failure to comply with the despatch or delivery dates or times provided that such liability shall not exceed the invoice price of the goods and the Seller shall not in any circumstances be liable for loss of profits or contract or for any consequential loss, damage or expense arising directly or indirectly from such delay. Where time is not expressly agreed to be of the essence of the contract, the Seller shall not be liable for any loss, damage or expense caused by any delay in despatch or delivery howsoever the same may be caused. Where a period for despatch or delivery is quoted the period shall be deemed to commence upon receipt by the Seller of a written order to proceed.
- (b) If despatch of goods is delayed or prevented in whole or in part by any circumstances whatever beyond the Seller's reasonable control then at the Seller's option the contract of the balance of it shall be cancelled or the time for delivery extended by a reasonable period. Such circumstances shall include but not be limited to war, civil disorder, fire, natural disaster, government action, industrial dispute, inability to obtain raw materials or supplier's delay in supplying or failure to supply necessary components.
- (c) Each consignment despatched shall be considered a separate transaction and defects in or failure of any consignment shall not affect the due performance of the contract as regards other consignments.

6. Delivery of Goods

The Buyer shall be responsible for providing adequate labour and facilities at delivery points for unloading goods orders by him and shall keep the Seller indemnified against all claims howsoever arising from such unloading operations.

7. Damage or Loss in Transit

Unless otherwise advised in delivery documentation claims must be made in accordance with time limits stipulated below and in the absence of claims within these limits shall be deemed to have been properly delivered.

- (i) all claims for damage to or partial loss of goods in transit must be submitted in writing to both the carrier and the Seller within seven days of delivery to the Buyer or its agent;
- (ii) all claims for non-delivery of the whole consignment must be submitted in writing to both the carrier and the Seller within seven days of the date upon which in the normal course of transit the goods ought to have been delivered to the Buyer or its agent.

8. Manufacturing Variables

- (a) Goods are sold in accordance with the Seller's current product specification and any advance sample shall be regarded only as an average representation of the specification of the specification concerned. Where the Buyer has specified that the goods should possess certain characteristics such characteristics shall be subject to reasonable commercial tolerance.
- (b) As work to improve the quality and performance of the goods and the economics of manufacture is continuously in progress, the Seller reserves the right to alter the goods without notice. Such alteration shall not be deemed to change the description of the goods ordered provided that the characteristics of the goods supplied conforms to the Seller's current product specification.

9. Liability of the Seller

- (a) The Seller accepts liability for death or personal injury resulting from the Seller's negligence or the negligence of its employees.
- (b) In the event of the goods showing defects due to faulty materials and /or faulty workmanship, the Seller will give credit for, or, within a reasonable time, replace such goods provided that written notice that the goods are defective is received by the Seller within thirty days of the defects becoming apparent to the Buyer or his agent or, in the event of the Buyer delivering the goods to a third party without examining them, within thirty days of the date when the Buyer becomes aware of the defects. After giving notice that the goods are defective in accordance with this sub-clause the Buyer shall, if so requested by the Seller, forthwith make the defective goods available to the Seller for collection.
- (c) Subject to the provisions of clause 8 hereof in the event of the goods not corresponding with any description under which they are sold, the Seller will give credit for, or, within a reasonable time, replace such goods, provided that written notice that the goods do not correspond with any description under which they are sold is received by the Seller within fourteen days of delivery of the goods to the Buyer or its agent. After giving notice that the goods do not correspond with any description under which they are sold in accordance with this sub-clause in the Buyer, shall, if so requested by the Seller, forthwith make the said goods available to the Seller for collection.
- (d) Since the conditions under which the goods may be used are beyond the control of the Seller all conditions or warranties, express or implied by statute or otherwise, as to fitness of the goods for a particular purpose are hereby excluded save that where written notice is given to the Seller by the Buyer that the goods are required for any particular purpose the Seller hereby warrants that the goods will, in the conditions under which the goods are normally used in the industry concerned, be reasonably fit for the purpose so specified, in the event of the Seller being in breach of the aforesaid warranty, subject to sub-clause (a) hereof the Seller's liability therefore shall not exceed the purchase price of the goods concerned.
- (e) Subject to sub-clause (a) hereof the Seller shall not be liable, contractually or otherwise, for any loss, damage or expense caused by or arising or resulting from any technical advice or assistance given from any representation made before or after formation of the contract unless the advice or assistance was given or the representation was made or pursuant to a written request by the Buyer and the Buyer proves that any loss, damage or expense has been caused by the negligence of the Seller or its employees in giving the advice or assistance or in making the representation.
- (f) Subject to sub-clause (a) hereof the Seller shall not be liable, contractually or otherwise for loss of profits or contracts or for any consequential loss, injury or damage arising directly or indirectly from the use, application or storage of the goods.
- (g) This clause sets out the Buyer's total remedies against the Seller and the Seller shall not be liable to the Buyer except as provided herein.

- (h) The Buyer must comply with the general safety notes contained in the Seller's operating instructions which are available from the Seller.

10. Indemnity

The Buyer shall indemnify the Seller against all claims in respect of any loss, injury or damage arising directly or indirectly from the use of the goods by the Buyer or others. The Buyer shall also indemnify the Seller against all claims for royalties or other payments in respect of payments, registered designs or other rights which may be claimed as a result of the goods having been made to a design or specification supplied by the Buyer and the Buyer shall indemnify the Seller against all claims, expenses and costs in connection with any infringement or alleged infringement of any patent, registered design or other industrial property right in the manufacture of goods to such design or specification.

11. Default in Payment and Insolvency

Without prejudice to its other rights and remedies the Seller may discontinue deliveries and, at the Seller's discretion determine the contract if the Buyer defaults in payment or becomes insolvent or commences winding-up proceedings or is otherwise incapacitated from doing business in consequence of debt and notwithstanding any contract term allowing the Buyer credit, payment shall become due to the Seller forthwith upon the commencement of any act or proceedings in which the Buyer's insolvency is involved.

12. Property in the Goods

- (a) The property in the goods (both legal and equitable) shall not pass to the Buyer until the purchase price has been paid in full. The Buyer shall be at liberty to deliver the goods to a third party pursuant to an agreement to re-sell the goods to making payments to the Seller but otherwise the Buyer, until payment in full has been made, shall hold the goods in its possession in a fiduciary capacity, shall keep the goods separate from other assets in its possession and shall not obliterate any mark placed on the goods by the Seller identifying the goods as products of the Seller.
- (b) The Seller shall be entitled at any time after payment for the goods has become due to re-take possession of the goods and remove them to the Seller's premises the Buyers shall be deemed irrevocably to have granted authority to the Seller to enter upon the Buyer's premises by its servants or agents and to re-take possession of the goods and remove them therefrom. If prior to the expiry of seven days from the date when the Seller has re-taken possession of the goods, the Buyer makes a payment in full for the goods, the Seller shall, without further obligation to the Buyer be entitled to re-sell the goods and the Buyer shall thereupon pay to the seller the difference, if any, between (i) the contract price of the goods and (ii) the price obtained by the Seller upon re-sale less the cost and expenses of re-possession and re-selling the goods.
- (c) In the event of the Buyer re-selling the goods before making payment in full to the Seller the Buyer shall account to the Seller for all the proceeds of any re-sale and, prior to paying such proceeds to the Seller, the Buyer shall hold the same in a fiduciary capacity keeping the same separate from other money held by it. On receiving such proceeds pursuant to the Buyer's aforesaid obligation therefore, the Seller will forthwith return to the Buyer and sum paid in excess of the contract price of the goods.
- (d) The Seller's rights herein contained shall be in addition to the Seller's right to maintain an action against the Buyer for the price of the goods and any other rights available to the Seller at law or in equity.

13. Risk

The goods shall be at the Buyer's risk when the Seller delivers them in accordance with the contract terms to the Buyer or to its agent or other person to whom the Seller has been authorised by the Buyer to deliver the goods.

- 14. The Buyer shall not exhibit any goods supplied in pursuance of this contract at any exhibition, trade display or other promotion without the prior written consent of the Seller.

- 15. All dies, patterns, moulds and tools whether part cost be quoted or otherwise or included in the price of the goods sold shall be the absolute property of the Seller. The Seller may at its discretion keep these items for a reasonable time in anticipation of future orders but without any liability on the part of the Seller.

16. Assignment and Sub-contracting

The Seller reserves the right to assign or, at the Seller's option sub-contract the whole or part of the contract. Amalgamation of the Seller with some third party shall not constitute grounds for termination for the Buyer.

17. Law and Jurisdiction

- (a) The construction, performance and validity of this contract shall in all respects be governed by English law.