

Terms and Conditions of Sale

1 Definitions

In these terms and conditions of sale all references to:
The "Buyer" are to;

The "Seller" are to;
The "Buyer" are to the person, firm or seller by whom the order is placed.
The "Products" means the products sold by the Seller to the Buyer and described in the contract for the sale or supply of Products between the Seller and the Buyer.
"Ex Works" shall be understood as defined in the INCOTERMS 2000 published by the International Chamber of Commerce or any amendment issued from time to time.

2 General

The contract is subject to these terms and conditions of sale and to the Seller's product order confirmation which override any differing conditions whether oral, on the Buyer's order form or the Buyer's other documents unless otherwise expressly agreed by the Seller in writing.

3 Quotations

A quotation by the Seller does not constitute an offer and (subject to the provisions of clause 4 below) the Seller reserves the right to withdraw or revise the same at any time prior to the Seller's acceptance of the Buyer's order.

4 Price of the Products

The price of the Products shall be as stated in the Seller's Confirmation of Order. All prices are Ex Works and exclusive of VAT, which shall be added at the rate in force at the time of invoicing if applicable. If before delivery of any of the Products there is any change to the quoted price which is due to reasons beyond the control of the Seller, such as an increase in the cost of raw materials, the Seller reserves the right to adjust reasonably the contract price accordingly.
In the event of any change of an order by the Buyer, any price quoted by the Seller may be adjusted accordingly.

In the event of the order being cancelled after the Seller has commenced work on the order, the Buyer shall be liable to the Seller for all expenses and costs incurred in addition to loss of profit incurred as a result.

5 Terms of Payment

Unless otherwise agreed, payment shall be made in full by the Buyer to the Seller without any deduction or set off before Products are collected or delivered.
On failure by the Buyer to settle any invoice by the due date (or in accordance with the terms agreed) the Seller may charge the Buyer interest on overdue accounts at the rate of 5% above base rate for the time being of Barclays Bank plc from the due date thereof until receipt by the Seller of the full amount whether or not after judgment.
If the Buyer fails to make payment on the due date for goods delivered under this contract the Buyer's right to any agreed discount shall be forfeited.

6 Delivery Dates

Delivery dates mentioned in any quotation, acknowledgement of order or elsewhere are given in good faith and the Seller shall use every reasonable endeavour to meet them. However, the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates and time of delivery shall not be of essence of the contract unless expressly stipulated in writing.
If delivery is delayed by strikes, lockouts, fire, accident, defective materials, delays in receipt of components purchased from outside suppliers or any other cause beyond the reasonable control of the Seller, a reasonable extension of time for delivery shall be granted by the Buyer.

If the Buyer refuses or fails to take delivery of Products tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Products so tendered. If the Buyer, prior to tender requests a change in the delivery date, the Seller shall be entitled to re-negotiate the price and/or cancel the contract if no new price can be agreed. The Seller shall be entitled to store at the risk of the Buyer any Products of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of such storage and any additional losses, costs, charges, and expenses incurred as a result of such refusal or failure. The Seller shall be entitled after the expiration of one month from the date of refusal to take delivery to dispose of the Goods in such manner as the Seller may determine.

In any event, all deliveries must be taken up by the completion date stated in the contract or, if no date is stated, deliveries shall be taken, and the contract completed within twelve months of the date of the contract. The Seller shall have the right to cancel any undelivered balance not taken up by the date stated on the contract or at the said twelve months, as the case may be, or any balance which the Seller cannot deliver by reasons of the Buyer's default hereunder, and in either case without prejudice to any claim for damages the Seller may have.

7 Retention of Title

7.1 Title No title in the Products shall pass from the Seller to the Buyer unless and until the Seller has received payment in full for the Products and for any other amounts owing by the Buyer to the Seller on any other account whatsoever.

7.2 Storage of the Products Until payment for the Products has been made in full, including payment of any interest due, the Buyer shall store the Products in such a way as to enable them to be identified as the property of the Seller and shall hold them as bailee for the Seller. The Buyer shall not dispose of or part with possession of the Products until title has passed, save that the Buyer may sell the Products in the normal course of business.

7.3 Risk The risk in the Products shall pass to the Buyer when they are dispatched from the Seller's premises either for delivery to the Buyer or as a result of collection by the Buyer. The Buyer shall keep the Products fully insured until title has passed.

7.4 Location of the Products until the Seller has received payment in full for the Products, including any payment of interest due, the Buyer shall notify and keep notified the Seller of the location of the Products, and if any change in the location of the use or storage of the Products.

7.5 Recovery of the Products The Seller reserves the right to repossess and uplift the Products and thereafter to resell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to the Seller's employees and agents to enter upon all or any of its vehicles or premises in which the Products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

7.6 Recovery of proceeds of sale of the Products in the event of non-payment If the Buyer re-sells any Products supplied by the Seller, the proceeds of any such re-sale equivalent to all sums owing ("the Proceeds") shall belong to the Seller until payment has been received in full. The Buyer will hold the Proceeds in a fiduciary capacity and keep them in a separate account, to be remitted forthwith to the Seller.

7.7 Detaching the Products In the event that the Products become attached to any item belonging to the Buyer ("the Buyer's Product"), and the Products remain in the opinion of the Seller's employees and/or agents readily detachable from the Buyer's Product without causing damage to the Buyer's Product, the Buyer hereby grants an irrevocable right to the Seller's employees and agents to separate and remove the Products from the Buyer's Product.

7.8 Termination of Buyer's Rights The Buyer's right to possession shall cease forthwith in the following events:

- (a) the Buyer has not paid all amounts due to the Seller on any account whatsoever;
- (b) the Buyer is declared bankrupt or makes or attempts to make any proposal to his creditors for composition or other voluntary arrangement with its creditors or does or fails to do anything which would entitle a petition for winding up or a bankruptcy order to be presented;
- (c) the Buyer does or fails to do anything which would entitle any person to appoint a receiver to the whole or part of the Buyer's assets or would entitle any person to present a petition for the administration of the Buyer or a resolution is passed for the winding up of the Buyer;
- (d) a judgment against the Buyer remains unsatisfied;
- (e) the Buyer is unable to pay a debt to a third party as it falls due and/or is or is deemed to be insolvent;
- (f) any distress or execution is levied against any of the Buyer's assets.

7.9 Insuring the Products The Buyer shall at all times keep the Products comprehensively insured against loss or damage by accident, fire, theft, and other risk usually covered by insurance in the type of business for which the Products are for the time being used in an amount at least equal to the balance of the price for the same time to time remaining outstanding. The policy shall bear an endorsement recording the Seller's interest.

7.10 Mitigation All mitigation/recovery activities by the Seller under the contract between the parties are agreed to be entirely without prejudice to any additional claims it may have against the Buyer for any failure by the Buyer to complete its obligations under the Contract.

7.11 Deduction, Set-off or Counterclaim In the event of any of the occurrences referred to in the sub-clause above entitled "Termination of Buyer's Rights" arising, all sums due from the Buyer to the Seller shall become immediately due and payable without deduction, set-off or counterclaim.

8 Notification of Failure of Delivery in accordance with Contract

The Buyer shall notify the Seller and the carrier of any damage to or defect in the Products that a reasonable examination would reveal and of any shortage in the quantity of the Products actually delivered. Such notification shall be made by fax as soon as practicable after delivery and in every case shall be confirmed in writing to the head office of the Seller within seven working days of delivery of the Products.

If there is short delivery, the Buyer undertakes not to reject the Products but to accept the Products delivered as part performance of the contract. Unless otherwise agreed, transport and insurance during transit is the responsibility of the Buyer.

In the event of the Buyer failing to give both the Seller and the Carrier such written notice then the Buyer shall be deemed to have accepted the Products in the quantity and state in which they are actually delivered and the Buyer shall be deemed to have waived any claim.

The Seller may at its option (if it accepts or agrees liability) make good any shortage or non-delivery and/or as appropriate replace or repair any Products found to be damaged.

9 Warranty

Subject to compliance with the above notification requirements which shall be a condition precedent to the Seller's liability, the Seller shall repair or replace (at its option) any component parts which subsequently fail in the 6 months following delivery due in the opinion of the Seller to faulty materials or workmanship.

This warranty specifically excludes component parts damages by reasons of misuse or normal wear and tear. The liability of the Seller under this warranty shall be limited to the net invoice value of the component parts and the Seller shall not be liable for any consequential loss or damage however caused. It shall be the duty of the Buyer to insure against such consequential loss and to hold the Seller harmless.

10 Liability

Save as may be stipulated to the contrary by compulsorily applicable statute, the Seller shall not be liable for defects in the Products caused by any act neglect or default of the Buyer or of any third party or for the unsuitability of the Products for mixing with other Products or substances or for any modifications to the products undertaken by the buyer.

Save where the Seller incurs liability under clause 9, the Seller's aggregate liability to the Buyer in respect of any occurrence or series of occurrences whether for negligence breach of contract misrepresentation or otherwise shall in no circumstances exceed the price of the defective damaged or undelivered Products determined by net price invoiced to the Buyer whether loss and damage is limited to the Products or includes consequential losses.

Subject to the foregoing and unless specifically otherwise agreed in writing between the Seller and the Buyer, all conditions warranties and representations expressed and implied by statute common law or otherwise in relation to the Products are hereby excluded to the full extent permitted by law.

11 Interference with Markings

The Buyer shall not alter, obscure, remove, conceal or otherwise interfere with any markings, or other identification of source or origin placed by the Seller on the Products, or on their labelling or packaging.

12 Specifications/Descriptions

Unless Products are supplied solely in accordance with the Buyer's specifications, all Products delivered will generally be to the Seller's specifications and descriptions and the Seller reserves the right, between the acceptance and delivery stages of any order, to make changes that are designed to improve the quality or performance of the Products.

13 Third Party Rights

If the Buyer uses or sells the Products in such manner as to infringe any rights of a third party the Seller shall not be responsible for such infringement nor for any alleged infringement arising from the Buyer's action in relation to the Products and the Buyer hereby agrees to indemnify the Seller from and against all liability arising therefrom.

The Buyer shall not make any representations warranties or guarantees with reference to Products except such as are consistent with these terms and conditions and entirely on its own behalf and not on behalf of the Seller.

14 Force Majeure

If the supply of Products by the Seller is prevented, hindered, delayed or rendered uneconomical by reason of circumstances or events beyond the Seller's reasonable control including but not limited to Act of God, restrictions, restraint or interference by any Government or governmental or official body or any legislation rules or orders they may make, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, severe weather conditions, difficulty or increased expense in obtaining labour, materials or transport, or other circumstances affecting the supply of the Products or of raw materials therefor by the Seller's normal source of supply or the manufacture of the Products or the means of delivery, the Seller shall be under no liability to the Buyer and shall have the right to cancel or suspend the whole or any part of the Seller's unfulfilled obligations and in the event of any such cancellation or suspension to treat the terms of this contract as having been modified accordingly by mutual consent.

15 Insolvency and Default

If the Buyer shall become bankrupt or commits any act of bankruptcy or if the Buyer is or is deemed insolvent or is put into liquidation otherwise than by voluntary liquidation for the purpose only of an amalgamation or solvent reconstruction or if the Buyer shall enter into any arrangement or composition with creditors or if a Receiver or Administrative Receiver or Administrator of the Buyer's assets or undertakings or any part thereof is appointed or if the Buyer commits any breach of this or any other contract between the Seller and the Buyer the Seller may at its option suspend or cancel this contract in whole or in part and refuse to make any further delivery.

16 Letters of Credit

Where payment for the Products is to be made by confirmed/irrevocable letter of credit, the Buyer remains liable to make payment to the Seller in the event that either the Bank which issued or the Bank which confirmed the Letter of Credit fails to do so.

17 Assignment

This contract is between the Seller and the Buyer as principals and is not capable of assignment by the Buyer except with the written consent of the Seller.

18 Amended Terms and Conditions

Any amendments to the terms and conditions of the sale of the Products shall be of no effect unless agreed in writing by the Seller.

19 Waiver

Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No exercise of any one right or remedy under these terms and conditions or at law or in equity shall (save to the extent, if any, provided expressly under these terms and conditions) operate so as to hinder or prevent the exercise of any other right or remedy howsoever at law or in equity.

20 Severance of Conditions

If any of these terms and conditions or any portion of same shall be held to be invalid or unenforceable in whole or in part under any enactment or rule of law such term or condition or portion of same shall to that extent only be deemed not to form part of these terms and conditions and the validity and enforceability of all the remaining terms and conditions shall not be affected.

21 Law and Arbitration

This contract shall be governed and construed in accordance with the laws of England and Wales and any dispute arising hereunder shall be submitted to amicable negotiation or alternative dispute resolution or failing resolution of same then by arbitration in London by reference to a single arbitrator agreed upon between the parties or failing agreement upon application of either to be appointed pursuant to the rules of the London Court of International Arbitration and as provided by the Arbitration Act 1996 or any statutory modification or re-enactment thereof from time to time in force and in such event the award of the arbitrator shall be final and binding, save that claims by the Seller against the Buyer for non-payment of the price or any part thereof of the Products may, at the option of the Seller, be pursued in the appropriate Courts of the jurisdiction where the Buyer is resident.