

# CONDITIONS OF SALE

## 1. DEFINITIONS

In these conditions

- (i) "the Company" means the Company whose name is set out overleaf.
- (ii) "the Buyer" means the individual or individuals or incorporated or unincorporated body with whom or which the Company has contracted subject to these conditions.
- (iii) "the Goods" means the goods agreed to be supplied in accordance with these conditions
- (iv) "the Services" means the service agreed to be supplied in accordance with these conditions.
- (v) "Contract" means the contract made between the Company and the Buyer subject to these conditions.
- (vi) where the context so admits the singular includes the plural and the masculine gender includes the feminine and neuter genders.

2. These Conditions shall prevail over and supersede any inconsistent terms or conditions in or referred to in the Buyer's Order or any other correspondence or elsewhere. The Buyer hereby agrees to be bound by these conditions and no addition to variation or exclusion of any term hereof shall be effective unless agreed in writing and signed by a director of the Company

## PAYMENTS

3. Accounts are due and become payable 30 days from the date of the invoice unless otherwise stated.

4. Interest will be payable from the due date for payment to the actual date of payment at the rate of 2% per month or part of a month on any part of the price remaining unpaid after the due date.

5. All prices are ex the Company's warehouse. Unless otherwise specifically stated the price is deemed to exclude Value Added Tax and any other tax on sales (or services) and to the extent that such tax is properly chargeable on the supply to the Buyer of the Goods

or Services the Buyer shall pay such tax as an addition to payments otherwise due to the Company under the Contract. Orders are accepted at prices ruling at date of delivery.

6. The Buyer shall not be entitled to withhold payment of an amount payable under the Contract to the Company because of any claim of the Buyer in respect of any alleged breach of the Contract or any other contract.

## PROPERTY

7.1 Title to all the Goods remains the property of the Company until payment in full for the same is received and no other sums are then outstanding from the Buyer to the Company in respect of other goods supplied by the Company.

7.2 The Buyer shall not have the power to deal with the Goods in any way, shape or form until payment in full is made to the Company unless the Company permits any such dealing.

7.3 The Goods must be kept aside and separate from any goods belonging to the Buyer or any other person, and the Buyer agrees that it will exercise all reasonable care over the Goods and protect them from loss or damage.

7.4 Where, in accordance with the terms of clause 7.2 the Company permits the Buyer to sell the Goods, such permission is subject to the express condition that the entire proceeds of any sale are held in trust for the Company and are not mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Company's monies.

7.5 In the event of payment being tendered by cheque, it shall not be deemed to have been made in full until such time as such cheque has been honoured. In the event of payment being tendered by Bill of Exchange, it shall not be deemed to have been made in full until such time as such Bill has been accepted and paid by the Drawee.

### **BANKRUPTCY OR LIQUIDATION**

8. If the Buyer makes any arrangement or composition with his creditors or if a bankruptcy order is made against him or being a company an order is made or a resolution is passed for the winding up of the Buyer (other than a voluntary liquidation solely for the purpose of amalgamation or reconstruction) or has a receiver appointed of the whole or any part of the assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt the Company shall be entitled to repossess the goods forthwith.

### **TIME FOR DELIVERY**

9.1 Without prejudice to the generality of Condition 17 the Company shall not be liable for failure to deliver the Goods or supply the Services by any particular date or for any consequential loss or damage sustained by the Buyer as a result of such failure.

9.2 Delivery periods quoted commence always from final agreement of the last detail which shall be confirmed in writing by the Company

9.3 Risk in the Goods shall pass to the Buyer when delivery takes place.

### **DELIVERY**

10. Delivery of the Goods shall be deemed to have taken place:

(a) Where the Goods are carried in a vehicle sent, provided or engaged by or on behalf of the Company when the vehicle is stationary as near to the point of delivery as it can reasonably get and the delivery note is tendered to the consignee.

(b) Where the Goods are carried in a vehicle sent, provided or engaged by or on behalf of the Buyer when the delivery note is tendered to the driver of the vehicle.

(c) Where the Goods are carried by rail, in accordance with British Rail's Standard Terms and Conditions.

(d) Where the Goods are sold f.o.b. when they are placed on board the ship or aircraft or hovercraft, at which point the responsibility of the Company shall cease and the Company shall be under no obligation to give the Buyer the notice specified in Section 32(3) of

the Sale of Goods Act 1979.

(e) Where the Goods are carried in any other way, when the delivery note is tendered to the driver of the vehicle in which the goods are taken from the Company's premises.

11. In order to fulfill the Contract the Company shall be at liberty to sub-contract to other persons firm or companies. It shall not be necessary for the Company to obtain the consent of the Buyer to any such sub-contract (but the Company shall inform the Buyer of the existence thereof if it considers that it is reasonable so to do).

### **NOTIFICATION OF DAMAGE OR LOSS IN TRANSIT**

12. The Company will not entertain a claim by the Buyer in respect of any non-delivery, short delivery, breakage or damage to or loss of the Goods or part of the Goods in transit unless:

(1) in the case of Goods carried by road, good hard roads are available up to the point of delivery and

(2) the Buyer gives the Company written notification of such non-delivery, short delivery, damage or loss within such time as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit or, where delivery is made

by the Company's own transport, within such time as shall enable the Company to comply with any requirement or condition of the Company's insurance policy covering such damage or loss PROVIDED THAT unless the Buyer shall have actual notice of such conditions

or requirements the time for giving such written notification by the Buyer shall be:

(i) in the case of short delivery or breakage and/or damage and/or loss of any part of a consignment of the goods within sixty hours from delivery and

(ii) in the case of non-delivery or loss of a whole consignment of the Goods, within fourteen days from the date of despatch.

ANY allowance for damage and/or breakage will only be made by the Company in respect of damage and/or breakage exceeding 5% of the value of the Goods.

### **INSTALMENT DELIVERIES**

13. Each part delivery or instalment of the Goods shall be deemed to be sold under a separate contract and no default by the Company in respect of any part delivery or instalment shall entitle the Buyer to treat the Contract as repudiated in regard to any balance or instalment remaining deliverable.

### **GUARANTEE**

14. (a) Any express or implied condition, statement or warranty statutory or otherwise as to the quality or correspondence with description or fitness for any purpose is excluded.

(b) The Company shall not be liable for any injury, loss or damage whether direct or consequential or special and howsoever caused resulting from or arising out of or incidental to:

(i) its performance or failure to perform its obligations under the Contract whether express or implied, or

(ii) any defect in the Goods, or

- (iii) any advice given by or on behalf of the Company in relation to the assembly, erection or installation of the Goods.
- (c) in lieu of the liabilities excluded by paragraphs (a) and (b) of this Condition the Company undertakes where appropriate and subject to the terms and conditions set out in paragraph (d) hereof free of charge:
  - (i) to examine any part of the Goods which is alleged to be defective, and
  - (ii) to repair or replace any such part found on such examination to be defective by reason of faulty design bad material or bad workmanship.
- (d) The terms and conditions referred to in paragraph (c) of this Condition are:
  - (i) that the alleged defect appeared within the period of seven days after delivery of the Goods:
  - (ii) that prior to the appearance of the alleged defect the Goods concerned were used solely for purposes disclosed by the Buyer at the time of the purchase,
  - (iii) that any parts alleged to be defective are delivered free of charge to the address of the Company forthwith after the appearance of the alleged defect.
- (e) The undertaking set out in paragraph (c) of this Condition does not extend to any articles or goods not manufactured by the Company but the Company will use its best endeavours to procure that the manufacturers of any such articles or goods shall comply with the provisions of any guarantee given by the manufacturers in respect of such articles or goods
- (f) The Company does not exclude liability in respect of claims, demands or proceedings in respect of death or personal injury to the extent that it was caused by negligence of the Company.

#### **EXCLUSION OF SALE BY SAMPLE**

15. Notwithstanding that in connection with any order the Company may submit a sample of the Goods to the Buyer as indicating the quality, colour or type of goods which may be supplied, no order for goods or acceptance thereof shall be deemed to constitute a sale by sample.

16. All descriptions and illustrations contained in the catalogues, price lists, advertisements and similar literature of the Company are intended merely to present a general idea of the Goods described therein and none of these descriptions and illustrations shall form part of the contract.

Any figures relating to performance given by the Company are based upon its experience and are such as it expects to obtain on test but the Company shall not be liable if such performance is not obtained unless it was guaranteed by special terms of the Contract.

#### **FORCE MAJEURE**

17. The Company shall not be liable for failure to deliver the Goods or any part of them or supply the services or any part of them due to any circumstances beyond its control including (but without limitation) fire, Act of God, civil commotion, strikes or other industrial action, whether of the Company's employees or the employees of any person, firm or company with which the Company has sub-contracted, national emergency, or an

outbreak of hostilities (whether war is declared or not) in which the United Kingdom is involved  
and the Company shall be entitled at any time on notice to the Buyer to make partial deliveries only of Goods or partial supply of Services or to determine the Contract without prejudice in any case to rights accrued in respect of deliveries of Goods or supply of Services already made.

#### **WAIVER**

18. The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended by the Company to the Buyer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.

#### **NOTICES**

19. (1) Any notice given under the Contract shall be in writing and shall be sent by registered post or the recorded delivery service addressed in the case of a notice to the Company, to the Company's head office and in the case of a notice to the Buyer, to the address of the Buyer or its representatives or agent shown in the Contract.

(2) Any notice sent by post shall be deemed conclusively to have been served (i) in the case of a notice sent to an address in the United Kingdom of Great Britain and Northern Ireland, two days after the same shall have been posted, and (ii) in the case of a notice sent to an address outside the United Kingdom of Great Britain and Northern Ireland, after the normal postal delivery period and in all such cases proof of posting shall be sufficient evidence of service.

#### **LAW APPLICABLE**

20. The Contract shall be governed by and interpreted in accordance with English Law, and all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Courts.

#### **HEADINGS**

21. The headings shall form no part of these conditions.