

STANDARD TERMS AND CONDITIONS

1. Interpretation

1.1. In these Conditions:

Buyer means the party who has contracted to buy the Goods.

Seller means the party who has contracted to sell the Goods.

Goods means the goods (including any instalment thereof) which the Seller is to supply in accordance with these Conditions.

Conditions means the standard terms and conditions of sale included in Clauses 1 to 10 hereof and any agreed variations thereto confirmed in Writing by the Seller to the Buyer.

Contract means the contract for the sale of the Goods.

Writing includes letter, email and facsimile transmission.

Consumer Sales refers to any Contract where the Buyer deals as a consumer as defined by Section 12 of The Unfair Contract Terms Act 1977.

Working Days means every day save for Saturdays, Sundays and public holidays in the jurisdiction where the Seller is resident.

1.2. 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.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Consumer Sales

2.1. In Consumer Sales any provision of these Conditions which by virtue of The Unfair Contract Terms Act 1977 would be of no effect shall not apply.

2.2. The statutory rights of Buyer and Consumer Sales are not affected by the Conditions.

3. Basis of the Sale

3.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.

3.2. Where the Contract stipulates the basis of sale is "to arrive" or "subject to shipment and safe arrival," it is agreed:

- a) all such sales shall be subject to shipment and safe arrival so that the Seller shall be under no liability if the Goods are not shipped or do not arrive at their port or place of destination;
- b) any variation in the total of the war risk insurance rate or of any charge, tax, levy, duty or import on the Goods shall be for the Buyer's account; and
- c) instructions for delivery are to be given by the Buyer to the Seller in time to enable them to be carried out upon arrival. In the performance of such instructions, or if ordered by the Buyer to rail or road transport, or to craft and the Buyer fails to provide such transport when the Goods are available, the Seller may take such steps as he may in his absolute discretion consider to be necessary to clear the Goods and may recover from the Buyer all expenses thereby incurred.

3.3. No waiver of or variation to these Conditions shall be binding unless agreed in Writing by the Seller to the Buyer.

3.4. The Buyer warrants it will not act upon and acknowledges the Seller shall not be liable to the Buyer for any advice or recommendations and/or representations given by or on behalf of the Seller before or after the Contract was entered into unless such are confirmed by the Seller in Writing to the Buyer.

3.5. Any error or omission in any documents issued by the Seller shall be subject to correction without any liability on the part of the Seller.

4. Orders and Specifications

4.1. No offer or order shall be deemed accepted unless confirmed in Writing by the Seller, but the Seller shall be entitled to waive this condition either expressly or by conduct.

4.2. The Buyer warrants the accuracy of the terms of any order submitted to and accepted by the Seller and undertakes to provide promptly to the Seller any necessary information required to perform the Contract.

4.3. The Buyer warrants that any Goods to be manufactured or processed to their specification by or on behalf of the Seller do not infringe any patent, copyright, design trademark or other industrial or intellectual property rights of any person and in the event of any breach of this warranty indemnifies the Seller against all consequences of any claim whatsoever made.

4.4. The Seller reserves the right to make changes in the specification of the Goods which do not materially affect their description and where such changes are required in consequence of amendments to safety or other statutes the additional cost thereof shall be for Buyer's account.

4.5. No Contract may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

4.6. The Seller shall have the right to vary the quantity of any Contract item by two percent (2%) more or less or if greater by any permitted margin appearing in any contract made by the Seller to satisfy the Contract with the Buyer. Such a variation shall not entitle the Buyer to take account of any bulk discount pricing that may apply.

5. The price of the Goods and payment

5.1. The price of the Goods and any variation thereto under the Contract shall be as agreed between the Buyer and the Seller at the time of placing the Order.

5.2. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at time of delivery to the Buyer or when notice of readiness for delivery has been given by the Seller to the Buyer.

5.3. The seller reserves the right to increase the price of the Goods, where such increase is due to any changes to or delay in performance of the Contract caused by actions, defaults and requests by the Buyer, or by virtue of an event beyond Seller's control, save that the Buyer shall have the right (except for Goods specially manufactured to their specification) to cancel the Contract within three (3) Working Days of being notified of the increase in price which is due to such event. No liability shall attach to the Seller in such circumstances. Where the Buyer purports to cancel the Contract, the Buyer shall be liable for all work done up to the point of notice of cancellation in writing unless otherwise agreed prior to cancellation.

5.4. Except in the case of Consumer Sales all prices are exclusive of Value Added Tax where applicable.

5.5. If the Buyer fails to make any payment on the due date under the Contract or any other contract with the Seller, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- a) cancel the Contract or suspend any outstanding deliveries to the Buyer;
 - b) appropriate any payment made by the Buyer as the Seller may think fit, notwithstanding any specific appropriation by the Buyer; and
 - c) charge the Buyer interest on all amounts unpaid at the rate of four per cent (4%) per annum above the base rate of Barclays Bank Plc from the date(s) the amounts were due until the date payment in full (including interest) is made.
- 5.6. If any contract made by the Seller to procure the Goods provides for any increase in price or for the cancellation of such contract in the event of alteration in rates of exchange, the Seller shall have the right correspondingly to cancel the Contract or increase the price to the Buyer.

5.7. Payment shall be made within the terms specified on the Sales Note, or, if no terms are specified, within 30 days from the date of the invoice. Time for payment is of the essence.

6. Delivery

6.1. The Seller shall notify the Buyer when the Goods are available for delivery whether at Seller's premises or to such place agreed under the Contract.

6.2. The Buyer shall promptly and in any event no later than 7 days take delivery of the Goods on receipt of notice of readiness from the Seller and if the Buyer delays or prevents such, then the Seller shall have the right to treat such conduct as a repudiation of the contract and, on giving notice to the Buyer, treat the contract as terminated or determine the method of storage appropriate for the Goods and charge the Buyer rent as appropriate at:

- a) the rate (if any) specified in the Contract or otherwise agreed in Writing; or
- b) a rate per day of zero point one percent (0.1%) of the invoiced value of any Goods stored at the Seller's premises together with the amount payable by the Seller per day for any Goods stored elsewhere.

6.3. Any additional cost arising from delay caused by the unreasonable act or default of either party in furnishing and/or loading and/or discharging rail or road transport or craft or container to be for the account of the party causing the delay.

6.4. Where the Goods are to be delivered in instalments, each instalment shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions 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. Delivery in instalments does not affect the payment terms as set out in clause 5.7 above. Where the payment date is calculated from the delivery date, each instalment shall count as a final delivery for those goods so delivered.

6.5. Where the Seller agrees to deliver the Goods to the Buyer, this shall be to the nearest point on a road suitable in the opinion of the driver for the vehicle used. The Buyer shall provide the necessary labour and equipment to unload the vehicle and or container without undue delay.

6.6. The Seller shall endeavour to comply with any dates quoted for delivery of the Goods, but shall not be liable for any delay in delivery caused by reasons beyond Sellers control. Time for delivery shall not be of the essence under the Contract, unless previously agreed by the Seller in Writing to the Buyer.

6.7. If the Seller fails to deliver the Goods and is liable to the Buyer hereunder in respect of such failure, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. Under no circumstances shall the Seller be liable to the Buyer for loss of profits or market or any consequential loss whatsoever.

7. Risk and Property

7.1. The risk of damage to, or loss of, the Goods shall pass to the Buyer:

- a) in the case of Goods to be delivered from the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller had tendered delivery of the Goods.

7.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and any interest due thereon and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3. 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 from those of the Buyer and third parties and property stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds or sale or otherwise 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.

7.4. 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.

7.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6. In the event of the Goods becoming the constituents or being converted into other products whilst any monies are owing to the Seller by the Buyer, the Seller shall have the ownership of and title to such other products as if they were the Goods and Clauses 7.3, 7.4 and 7.5 hereof shall apply to such products mutatis mutandis.

8. Warranties and Liability

8.1. Goods are not tested or sold as fit for any, particular purpose and any term, warranty or condition expressed, implied or statutory to the contrary is excluded.

8.2. It is hereby declared and agreed:

- a) that the Buyer is skilled and knowledgeable with regard to the Goods;
- b) that the Buyer does not rely on the Seller's skill or judgement with regard to the Goods;
- c) that the Buyer will inspect the Goods in a reasonably thorough manner at its own premises prior to use.

8.3. Goods manufactured to the design or specification of the Buyer or their experts carry no undertaking of any kind except of compliance with the design or specification.

8.4. 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 (unless fraudulent), or any implied warranty, condition or any other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) arising out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the invoice price of the Goods the subject matter of any claim, except as expressly provided for in those Conditions.

8.5. If and to the extent that any person by whom the Seller has been supplied with the Goods (in this sub-clause referred to as "the Supplier"), validly excludes, restricts or limits the liability to the Seller in respect of the Goods or of any loss or damage arising in connection therewith the liability of the Seller to the Buyer in respect of the Goods or any loss or damage arising in connection therewith shall be correspondingly excluded, restricted or limited. If the Supplier validly excludes, restricts or limits his liability to the Seller in respect of any liability of the Seller to the Buyer in connection with the Goods, then the liability of the Seller to the Buyer in respect of the Goods shall be excluded, restricted or limited to the extent to which the Supplier is liable to the Seller in respect of the Seller's liability to the Buyer and no further. Any term, warranty or condition expressed or implied or statutory to the contrary is (except in the case of Consumer Sales) excluded. The Seller will upon request supply the Buyer with details of any such exclusion, restriction or limitation.

8.6. All terms expressed or implied relating to the quality of the goods are warranties only the breach of which gives no right to reject the Goods or terminate the Contract in any circumstances whatsoever.

8.7. If it is agreed that the Goods be processed by the Seller then the Seller may arrange for such processing to be performed by a third party and in such case the operation shall be carried out on the standard terms and conditions of the third party, but entirely at the Buyer's risk and no liability whatsoever is accepted by the Seller for any loss, deterioration or damage arising from such processing whether carried out by the Seller or by third parties to whom such processing is sub-contracted. The Buyer hereby grants to the Seller authority to conclude contracts with such third parties on the standard terms and conditions of such third parties. If subsequently the Goods are processed by the Buyer, the Seller is to have no liability for any damage or deterioration to the Goods or any loss arising thereof unless any such process was carried out with the prior approval in Writing of the Seller.

8.8. Notice of any claim arising out of or in connection with this Contract must be given in Writing to the Seller as soon as the Buyer becomes aware of the same, but in any event within ten (10) Working Days from the date when the Goods are collected or delivered failing which all claims (other than claims arising out of or in connection with defects not discoverable upon full and proper examination of the Goods) shall be deemed to be waived and absolutely barred. In any event, any claims in respect of latent defects shall be deemed to be waived and absolutely barred twelve (12) months after the Goods are collected or delivered.

8.9. The Seller shall be under no liability for shortage or damage in transit or for deviation, misdelivery, delay or detention unless the Seller and the carriers are advised thereof in Writing, otherwise than upon a consignment note or delivery document, within three (3) Working Days and a claim is made on the Seller and the carrier in Writing within seven (7) Working Days after the termination of transit as defined under the current conditions of carriage of the Road Haulage Association.

8.10. The Buyer shall only be entitled to pursue claims in respect of Goods available for inspection by the Seller and in any event the Seller shall in respect of any claim be entitled to assume that any Goods not available for inspection are at the top grade for such Goods within the Contract. The Buyer shall make the Goods available for inspection for a period of no less than 28 days following notification of any claim to the Seller.

8.11. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's control.

9. Insolvency of Buyer

9.1. The provisions of Clause 9.2 apply if

- a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- b) an encumbrancer takes possession, or a Receiver is appointed, of any of the property or assets of the Buyer; or
- c) the Buyer ceases or threatens to cease to carry on business; or
- d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- e) the credit insurer of the Seller is not prepared to offer credit insurance in respect of the Buyer or subsequently withdraws such cover or it becomes unavailable due to a credit limit in respect of the Buyer being exceeded and the Buyer fails within seven (7) Working Days' notice of being so required by the Seller to provide reasonably sufficient security.

9.2. If any of the circumstances or events under Clause 9.1 arise or apply, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under 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 notwithstanding any previous agreement or arrangement to the contrary.

10. General

10.1. The Buyer shall not be entitled to withhold or set off payment of any amount due to the Seller under the terms of this Contract whether in respect of any claims of the Buyer in respect of faulty or defective Goods or for any other reason which is contested or liability for which is not admitted by the Seller.

10.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

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

10.4. Except as may be specifically provided for elsewhere in this Contract, this Contract does not create any right enforceable by any person not a party to it, save that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Contract.

10.5. The Contract shall be governed by the Laws of England.

10.6. 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 offer or any other provisions.

10.7. Any dispute and/or claim which cannot be settled amicably shall (except in the case of Consumer sales) be referred to Arbitration by a sole Arbitrator if the parties can agree upon one, otherwise to two Arbitrators with one to be appointed by each party and if the Arbitrators fail to agree upon an award, they shall appoint an umpire to decide on one. In either case, the appointment and conduct of the arbitration shall be in accordance with and subject to the provisions of the relevant Arbitration Act(s) in force and applicable under English Law.