

TERMS AND CONDITIONS OF SALE

THE CONTRACT

- 1.1 All orders are placed and accepted by the Company only under these terms and conditions. These terms and conditions exclude any other terms and conditions and any provision stipulation or condition in the Buyer's order form or elsewhere which conflicts with or in any way qualifies or negates any of these terms and conditions shall have no effect and these terms and conditions shall prevail.
- 1.2 No variation of these terms and conditions is permitted unless expressly accepted by a Director of the Company in writing.
- 1.3 A quotation given by the Company is not an offer and the Company shall not be bound until the Buyer's order has been accepted in writing. The Company reserves the right to withdraw any quotation without prior notice.
- 1.4 All quotations and Price Lists are given on the assumption that the Buyer has taken all necessary steps to ensure that the works to which any estimate and specification supplied by the Company refer comply with relevant building regulations and any other Local Authority regulations and bye-laws. The Buyer shall also be responsible for obtaining any necessary planning permissions, building regulations or other necessary approvals and for ensuring that the structure of the building and floors will be suitable for the proposed works. In the event that the Company provides estimates of quantities or measurements on the basis of drawings and/or Bills of Quantities and/or specifications submitted by the Buyer, the Company shall exercise reasonable care in so doing but the Company accepts no liability for inaccuracies in the estimates or calculations.

CANCELLATION

2. No cancellation of the whole or any part order by the Buyer is permitted except where expressly agreed by a Director of the Company in writing. In the event of such agreed cancellation the Buyer shall indemnify the Company fully against all expenses incurred up to the time of such cancellation in addition to such other remedies as the Company may have.
- 2.1 All goods will be charged at prices ruling at the date of despatch and Price Lists are subject to amendment or withdrawal without notice.
- 2.2 No provision has been made in any Quotation or Price list for Value Added Tax, import duties, fees by district surveyor or local authority or for any other charges levied by or under the authority of any government or other statutory body and any estimate is subject to the payment by the Buyer of any such tax, duty, fee or charge.
- 2.3 Quotations are based on prices applicable to quantities specified in the event of orders being placed for lesser quantities the Company shall be entitled to adjust the price of goods as ordered to take account of the variation in quantity.

PAYMENT

- 3.1 Accounts are due for payment no later than the 28th Day of the month following delivery. The Company reserves the right to charge interest at 2 per centum per annum above Lloyds Bank Plc base rate from time to time in force on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment.
- 3.2 Credit may be allowed on such terms and conditions as the Company shall at its absolute discretion from time to time prescribe. The Company reserves the right to refuse to accept orders on credit at any time and without giving any reason. In the event of non-payment in accordance with credit terms, the whole of the price of the Goods delivered shall immediately become due and payable and the Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Buyer.
- 3.3 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim of the Buyer and in the case of any short delivery or delivery of damaged Goods, shall remain liable to pay the full invoice price of all other Goods delivered or available for delivery.
- 3.4 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Buyer.
- 3.5 If the Buyer being a company compounds or enters into any composition or arrangement with its creditors or a proposal is made for a Voluntary Arrangement with his Creditors; has a Petition presented for the appointment for an Administrator or an Administrator is appointed, has a Receiver or Manager or Administrative Receiver appointed over all or any part of its assets; has a resolution passed for its voluntary winding-up save for the purpose of amalgamation or reconstruction or enters Voluntary Liquidation, has a Petition presented for its winding-up or a winding-up order is made; is removed for any reason from the Register of Companies or being an individual enters a Deed of Arrangement or makes any assignment for the benefit of or enters into any arrangement voluntary or otherwise with his creditors either by composition or otherwise; makes or has an application made for an Interim Order in connection with a proposal to Creditors for a Voluntary Arrangement; has a Petition presented for his Bankruptcy or is made Bankrupt then, in any case or if any sum owing by the Buyer to the Company be overdue or the Buyer commits a material or serious breach of this Contract (and in the case of such breach being remediable fails to remedy it within 7 days of receiving notice to do so) the Buyer will be deemed to have repudiated the Contract and all sums owing to the Company on any account shall become due and payable forthwith without requirement for any notice to be given.

DELIVERY

- 4.1 Goods collected by the Buyer from the Company's premises shall be deemed to be delivered when they have been loaded to the Buyer's vehicle or are otherwise in the Buyer's possession. Goods transported by the Company shall be deemed to be delivered when they are ready to be unloaded on the site specified by the Buyer. The Buyer shall be liable for any subsequent loss or damage to the Goods however caused.
- 4.2 All deliveries are effected to Ground Floor entrance only unless otherwise agreed in writing. The Company does not undertake to deliver or collect any load over roads or ground which it considers unsuitable and accepts no responsibility for damage to roads, driveways or paved areas, save where such damage is occasioned by proved negligence of a company servant. All necessary labour and equipment required to unload materials promptly shall be supplied by the Buyer and the responsibility of the Company's drivers is limited to handling goods off the vehicle.
- 4.3 Delivery dates are estimates only and time of delivery is not of the essence of the Contract. The Company shall not be liable for any loss whatsoever or howsoever arising from later delivery or by the failure to make Goods ready for collection on the due date.
- 4.4 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- 4.5 If for any reason the Buyer is unable or refuses to accept delivery or requests delivery by instalments, the Company shall be entitled to treat the contract as fulfilled and place the goods into store. Delivery will be deemed to have taken place for invoicing payment and passing of risk. The Buyer will be responsible for any storage charges, additional handling and transport charges incurred by the Company.
- 4.6 The Buyer shall either themselves or by their duly authorised representative sign the delivery ticket as acknowledgment of delivery provided that on delivery to the address nominated by the Buyer the Company shall be entitled to assume that any signature given is that of such a representative.
- 4.7 Deviations in quantity of the Goods delivered (representing not more than 10 per cent by value) from that stated in these terms and conditions shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.

INSPECTION

5. The Buyer is under a duty wherever possible to inspect the Goods on delivery or on collection as the case may be. The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with, and, in any event will be under no liability if a written complaint is not delivered to the Company within 3 days of delivery detaining the alleged defect or shortage. In all cases where defects or shortages are complained of the Company shall be under no liability in respect thereof unless a reasonable opportunity to inspect the Goods including all or any strapping, battens or packaging in which the Goods complained of are contained is provided to the Company before any use is made thereof or any alteration or modification is made thereto by the Buyer. Otherwise the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever or howsoever arising for such shortage or damage.

RETENTION OF TITLE

- 6.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to, or collected by, the Buyer or its agent.
- 6.2 The ownership of the Goods sold by the Company to the Buyer shall remain with the Company until the Buyer has paid the price for those Goods. For the purpose of these terms all liquidated sums owned by the Buyer to the Company or any account or grounds whatsoever shall be deemed to form part of the said price.
- 6.3 The Buyer is licensed by the Company to use or to agree to sell the Goods delivered to the Buyer 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 moneys paid into an overdrawn Bank account and shall at all times be identifiable as the Company's money.
- 6.4 Until title to the Goods passes:-
The Buyer will hold the Goods as fiduciary agent and bailee for the Company.
The Goods shall, subject to clause 6.3 be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company and the Buyer will not or will not allow any interference with any identification marks or serial numbers on the Goods, or the packaging thereof.
Without prejudice to any other rights the Company may at any time revoke the power of sale and use contained in clause 6.3 by notice to the Buyer if the Buyer is in default in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied at any time by it to the Buyer) or if the Company has bona fide doubts as to the solvency of the Buyer.
The Buyer's power of sale and use contained in clause 6.3 shall automatically cease upon the happening of any of the events set out in clause 4.5 or if the Buyer takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceeding under foreign law and all sums owing to the Company on any account shall become due and payable forthwith without requirement for any notice to be given.
- 6.5 The Buyer shall place any of the Goods in its possession or under its control and unsold at the disposal of the Company and the Company by its servants or agents shall be entitled to enter upon any premises of the Buyer or any premises under the Buyer's control or to which the Buyer has a right of access for the purpose of inspection, repossession and removal of such Goods at any time.

WARRANTIES AND LIABILITIES

- 7.1 No representation or warranty is given as to the suitability or fitness of the Goods for any or any particular purpose and the Buyer shall satisfy itself in this respect and shall be totally responsible therefore.
- 7.2 Any Goods manufactured to the design quantity measurement or specification of the Buyer or its experts are produced without warranty or any kind except their compliance with the design quantity measurement or specification. The Buyer will unconditionally fully and effectively indemnify the Company in respect of any claim resulting therefrom including the infringement of patent, copyright, design, trademark or any other industrial or intellectual property rights resulting from the Company's use of the said design or specifications.
- 7.3 Where the Company provides designs, drawings, or plans whilst every endeavour is made to ensure accuracy, the final responsibility as to the functional and structural suitability of such designs, drawings or plans rests with the Buyer.
- 7.4 Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby. The Buyer hereby acknowledges that it has not relied on any representation made to him by the Company or any of its servants or agents save as expressly incorporated in the Contract.
- 7.5 Nothing in these Terms and Conditions shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence.
- 7.6 The Company agrees that if any defect in goods supplied caused by faulty design, manufacture, materials, workmanship or processing but not caused by abnormal use, misuse or neglect is discovered the Company will in its absolute discretion either repair the Goods at its own expense or replace the Goods or refund the purchase price.
- 7.7 The Buyer cannot claim the benefit of this clause unless the defect is discovered during the period of 3 days commencing with the date of delivery and he informs the Company of the relevant defect in writing within 7 working days of discovering it, and he returns the Goods to the Company at his own expense. The risk of accidental loss whilst the Goods are being returned will be borne by the Buyer.
- 7.8 The Company is willing to undertake liability additional to that provided by this clause if a higher selling price for the Goods is agreed.
- 7.9 In consideration for receiving the benefits of this clause, the Buyer agrees that, no other terms, whether conditions, warranties or innominate terms, express or implied, statutory or otherwise, shall form part of this Contract (except where the Buyer deals as consumer within section 12 of the Unfair Contract Terms Act 1977 when the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 shall be implied into the Contract).
- 7.10 The Company shall not be liable for any consequential loss or indirect loss suffered by the Buyer or any customer of or purchaser from the Buyer as to which the Buyer shall hold the Company fully and effectually indemnified whether for this loss arises from breach of a duty in contract or tort or in any way (including loss arising from the Company's negligence).
- 7.11 Without prejudice to any other provision in these conditions in any event the Company's total liability for any one claim or for the total of all claims arising from any one act default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the Contract price for the Goods supplied save in respect of the Company's liability for death or personal injury resulting from negligence.

FORCE MAJEURE

8. The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside its control including but not limited to acts of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulations (UK or otherwise) delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.
9. If any provision of this Contract shall be void or unenforceable in whole or in part, the remaining provisions and the remainder of the provision affected shall remain in full force and effect.
10. The Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Courts.