

# Terms and Conditions

## 1. Definitions

These are the terms and conditions governing the sale of seller's goods. Seller's commitment shall become effective only upon despatch of seller's written order acknowledgement or invoices, whichever occurs first. These Conditions and any subsequent variations thereof shall supersede all previous conditions of trading between the Seller and Buyer. No modification of these terms or conditions shall be of any force unless such modification is reduced to writing and signed by the party claimed to be bound thereby, and no modification shall be effected by the acknowledgement or receipt of a purchase order or other forms containing different conditions. In particular, acceptance of seller's full or partial deliveries, as the case may be, or payment by buyer, shall constitute acceptance of seller's condition of sale.

## 2. The Price and Payment

- 2.1 The price shall be as set out in the Seller's order acknowledgement or invoice, but the seller reserves the right at its option to change or credit to the buyer to amount of any error or omission in the price as so set out. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 2.2 Seller's terms of payment applicable to any order are thirty (30) days from the end of the month or invoicing or such other terms as are specifically quoted to the buyer in writing. Non-compliance with seller's terms of payment shall constitute default without reminder. In the case of default seller may charge interest at a rate of 4% above the Barclays' Bank rate in force on the first working day of the month in which the invoice in respect of such interest is raised, or of the month in which payment of the principal sum is made, if earlier. Seller's acceptance of a draft or comparable document shall not constitute payment. In the event that buyer should fail to fulfil the terms of payment quoted in respect of any invoice, or should seller have indications that buyers financial responsibility is inadequate. Seller may, in his sole discretion, either demand payment of all balances whether due or not/and or cancel all outstanding orders and decline to make further deliveries except upon receipt of cash or satisfactory security. The selling off or withholding of payments by buyer in respect of any claim shall not be allowed unless expressly agreed by the seller in writing. For the purposes of these conditions payment shall mean the receipt of cleared funds by seller.
- 2.3 Goods not paid for in full may not be pledged or assigned to third parties.

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## 3. Title and Risk

- 3.1 Until buyer has paid seller the full price of the goods and also of any other goods at any time supplied by seller (together in this clause referred to as "the goods" and all other sums due or to become due to or liabilities present, future or contingent of buyer to seller and all sums due in any way to buyer to any holding company or subsidiary company of seller (or any subsidiary of such holding company) and any agent or distributor of seller:-
- 3.2 The ownership of goods shall not pass to buyer.
- 3.3 Buyer shall, however be entitled to sell the goods in the ordinary course of business on the basis that the proceeds of sale shall be the property of seller and buyer agrees to account to seller on demand in respect of such proceeds and, if so, required to execute a formal assignment of all claims against the sub-purchaser.
- 3.4 Seller reserves the right at any time to terminate buyer's power of sale by notice to buyer if buyer is in default for longer than 7 days in the payment of any sum due to seller for whatever reason or, if seller has serious doubts as to the solvency of the buyer.
- 3.5 Buyer's power of sale shall automatically terminate if buyer becomes subject of liquidation, bankruptcy or other insolvency proceedings or a receiver is appointed over any of the assets of the undertaking of buyer or if a petition is presented for the appointment of an administrator to buyer or if buyer makes arrangements or composition with creditors becomes unable to pay its debts within the meaning of Section 123 of the United Kingdom Insolvency Act 1986, or any statutory re-enactment thereof.
- 3.6 If buyers' power of sale is terminated buyer shall immediately make the goods available for collection by seller and buyer hereby irrevocably authorizes seller to enter upon any premises belonging to buyer or under its control for the purpose of recovery of goods.
- 3.7 In the event that seller should exercise its right hereunder to repossess the goods: -
- (a) Seller shall have no obligation to account to buyer for any amount received by it on sale thereof whether in excess of that due by buyer to settle or not.
- (b) If the amount received by seller on sale of such repossessed goods shall be less than the amount due by buyer either in respect thereof or on any other ground whatsoever such repossession shall for the avoidance of doubt not extinguish the liability of buyer either for any deficiency in the amount received by seller on such sale or for damages in respect of any loss occasioned by seller as a result of its exercising its rights hereunder.

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- (c) Buyer shall be liable to seller in addition to any other amount for which it may be liable, for all costs, charges and expenses (including legal costs) on a full recovery basis occasioned by such exercise by seller of its said right to repossess.
- 3.8 Buyer agrees to store the goods, until they have been paid for, in such a way that they are readily identifiable as the property of seller.
- (a) Nothing in this clause shall confer any right on buyer to return the goods to or to refuse or delay payment thereof unless otherwise agreed and if any such return is agreed buyer shall be liable to seller for any loss suffered by seller thereby and the return of the goods shall not extinguish any claim by seller in respect thereof.

## 4. The Goods

- 4.1 Seller's volumes taken at shipping points shall govern unless proven in error.
- 4.2 If goods forming any portion of an order are not taken by buyer in accordance with the terms of delivery originally specified by seller, the sale thereof may be postponed or cancelled at seller's option without tender or notice to buyer. Such postponement or cancellation shall not affect any remaining portion of the order.
- 4.3 In the event of inability for any reason to supply the total demands for the goods ordered, seller may allocate its available supply among any or all purchasers or users (including seller and its associates) or make partial shipments on such basis as it may deem fair or practical, without liability for any failure of performance which may result there from.
- 4.4 Orders are not assignable or transferable by buyer, in whole or in part, except with the written consent of seller.

## 5. Warranties and Liability

- 5.1 Seller warrants that the goods sold hereunder shall be equal to seller's specifications, and buyer assumes all risks and liability for results obtained by the use of the goods covered by this order whether used singularly or in combination with other products. The warranty stated above is given in respect of goods of first grade quality only and shall not apply either to any waste or to goods sold as sub-standard by seller. All other warranties expressed or implied are hereby excluded.
- 5.2 Where goods have been processed in any manner by buyer or any third party after they have been sold, the warranties expressed herein shall be limited to the goods in their unprocessed condition.

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- 5.3 Seller warrants that the goods delivered do not infringe any patent in the country of origin, the United Kingdom or republic of Ireland; no further patent warranty is made.
- 5.4 No liability shall result from delay in performance or non-performance, directly or indirectly caused by factors such as but not limited to fire, explosion, accident, flood, labour trouble or shortage, war, act of or authorised by any government, inability to obtain suitable material, equipment, fuel, power or transportation, or act of god or arising from contingencies, happenings or causes beyond the control of the party affected. Quantities so affected by such circumstances may be eliminated or postponed by seller without liability but the rights and duties of each party shall otherwise remain unaffected.
- 5.5 Upon request, seller shall endeavour to furnish such technical advice or assistance as it has available in reference to the use of goods by buyer, it is expressly understood, however, that all such technical advice or assistance is given without liability and seller assumes no obligation or liability for the advice or assistance given or results obtained there from, all such advice or assistance being given and accepted at buyers' risk.
- ### 6. Delivery of goods
- 6.1 Seller shall use all reasonable endeavours to meet the terms of delivery which seller has quoted but seller accepts no liability for any failure to deliver the goods within the set period.
- 6.2 Risk of loss of the goods hereunder shall pass at the point of delivery specified by seller, Incoterms 1990 shall apply to export sales.
- 6.3 If at any time before the delivery of the goods any condition shall exist or arise which shall impede the free exchange of currency or goods between the United Kingdom and/or the Republic of Ireland and the country of origin of the goods, then delivery of any goods so affected may be suspended during the continuance of any such conditions or the contract may be terminated forthwith by either party.
- 6.4 Returnable product carriers or containers delivered but not sold hereunder are the property of the seller and at seller's option will either return them undamaged freight collect to the destination designated by seller or make them available at buyer's premises for collection by or on behalf of seller in either case within the period specified by seller. Any deposit made by buyer on such product carriers or containers shall be forfeited in event of failure to return them undamaged in the specified period. Where no deposit is required, buyer agrees to reimburse seller for the value as shown the face of the invoice of any such product carriers or containers damaged or not returned within the specified period. Seller's count and rejection of damaged returnable product carriers shall not be accepted as final.

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## 7. Transportation

7.1 Seller reserves the right to select the mode of transportation and the carriers to the point of delivery. Buyer's shall bear the cost of special transportation arrangements requested by him, including the cost of any demurrage incurred as a result of buyer refusing or delaying acceptance of goods in transit beyond the delivery date indicated by seller.

## 8. Discrepancies

8.1 Except, as provided by law no claim of any kind, whether as to goods supplied or for non-delivery, of the goods shall be greater in amount than the goods in respect of which such damages are claimed and seller accepts no liability for any indirect or consequential loss or loss of profit.

8.2 All goods are tested and examined before despatch. If found damaged when received, notification of damage must be made by the buyer to the carriers immediately, or to the seller within 3 working days our warehouse (see contact details on the first page of the Conditions of Sale).

8.3 Any claims for shortages, non-delivery or invoice discrepancies must be made within fourteen (14) days upon receipt of the invoice, otherwise they cannot be accepted. No charges or expenses incidental to any claim shall be allowed unless approved in writing by the seller. Goods the subject of the claim shall not be returned to seller or otherwise disposed of without seller's permission given in the form of a returns reference number obtained in writing from the seller's warehouse. Goods returned by the buyer to the seller without written approval will be subject to a 5% surcharge of the cost of the goods.

## 9. Proper law of contract

9.1 These conditions shall be subject to and shall be construed in accordance with the laws of England. The courts of England shall have exclusive jurisdiction over any controversy which may arise hereunder, unless the parties agree otherwise in writing

## 10. Variation of terms

10.1 The Seller reserves the right to vary these conditions by not less than 7 days in writing to the Buyer. The Buyer shall be entitled to reject any such variation by a counter notice to be served within 7 days at the expiry of the notice specified in the Seller's notice. These Conditions and any subsequent variations thereof shall supersede all previous conditions of trading between the Seller and Buyer.