

Terms & Conditions of Sale

1. QUALITY, DEFECTS AND WARRANTY

- (a) The Seller guarantees that the goods and materials manufactured by it shall be of merchantable quality. The Seller further guarantees that the services rendered by it shall be carried out with reasonable care and skill and in a workmanlike manner.
- (b) In the event of the Buyer discovering any defects in the goods or materials manufactured by the Seller or in regard to services rendered by the Seller due to the act or default of the Seller, then on such a claim being substantiated to the Seller's reasonable satisfaction the Seller will either make good the defect, replace the defective goods or materials or parts thereof free of charge or at the Seller's discretion make the Buyer an appropriate allowance in the price therefor provided always that :-
- (i) The Buyer has, where the defects are apparent on inspection, notified the Seller, within 48 hours of delivery to the Buyer or within 48 hours of the services complained of, by telephone and confirmed the claim by letter posted by first class post within the same period.
- (ii) The Buyer has, where the defects are not apparent on inspection, notified the Seller within 48 hours of the defects being apparent or within 48 hours of the services complained of being apparent (subject as hereinafter appearing) by telephone and confirmed the claim by letter posted by first class post within the same period.
- (iii) Such defects as are governed by clause 1(b)(ii) hereof are reported in writing by the buyer to the Seller within 12 months of dispatch of the goods or materials from the supplier's works or within 12 months of the services complained of.
- (iv) The Buyer has afforded the Seller reasonable access and facilities (including the right to take away goods and materials for testing purposes) for the purpose of inspecting the goods or services which the Buyer claims are defective. The Seller shall have the right to require the Buyer to return to the Seller's nominated premises the goods or materials or any part thereof which the Buyer claims are defective, but in any such event, if the Buyer's claim is substantiated as aforesaid the Seller shall forthwith reimburse the Buyer's reasonable costs in so returning the defective goods or materials. Any goods, materials or services found to be defective under this clause and which are not so returned to the Seller's nominated premises shall be dealt with by the Buyer as directed by the Seller. Additionally, any defective goods or materials replaced become the property of the Seller.
- (c) Subject as hereinafter appearing no warranty or guarantee is given (whether statutory or otherwise) in respect of goods or materials supplied by the Seller which are not of its own manufacture.
- (d) In relation to goods and materials supplied by the Seller, but not of its own manufacture, the Seller will use its best endeavours to secure to the Buyer the benefit of such guarantee, if any, as may be given by the manufacturer of such goods and materials, provided always that the Buyer indemnifies the Seller in respect of the costs incurred in securing such guarantee as may exist.
- (e) The Buyer accepts that the express benefits of the warranty granted to the Buyer under this clause, together with the express remedies provided to the Buyer in respect of the goods and materials and services in accordance with these conditions of sale, represent the entire responsibility and liability of the Seller to the Buyer in respect thereof and are expressly in lieu of, and the Purchaser hereby waives, all other terms conditions and warranties express or implied, whether statutory or otherwise and any other obligations and liabilities whatsoever arising of the Seller whether based in negligence or otherwise relating to the goods and materials or services supplied under the contract or any other goods and materials or services supplied or rendered by the Seller.

2. DELIVERY

Each delivery of the goods and materials sold and each service rendered shall be deemed to constitute a separate contract and any difference or default in relation to one delivery or service shall not affect any other delivery or service.

3. ACCEPTANCE OF DELIVERY

- (a) The Buyer undertakes to accept delivery of the goods and materials or any consignment thereof when the same are supplied.
- (b) If the buyer shall refuse or hinder delivery of the goods or materials or any consignment thereof the Seller shall have the right to remove and store the goods and materials or any consignment thereof and the Seller's charges for removal storage maintenance and insurance shall be added to the price and paid by the Buyer. The Seller shall also have the right at any time after the Buyer has failed or delayed in taking delivery of the goods or materials or any consignment thereof of giving to the Buyer three days notice in writing and notwithstanding the fact that the storage and other charges are payable, to sell the goods or the appropriate consignment elsewhere at a time judged by it to be expedient without prejudice to the Seller's rights to claim for breach of contract and the Buyer shall be responsible for any deficiency between the net sale price after charging all of the Seller's charges and expenses and the contract price.
- (c) If the Seller agrees in writing to delay delivery of any of the goods or materials or any consignment thereof the Buyer shall nevertheless pay the Seller as if for the purpose of payment only the goods or materials or any consignment thereof had been delivered and in addition the Buyer shall also pay to the Seller the Seller's charges in respect of removal storage maintenance and insurance of the goods or materials or any consignment thereof.

4. AVAILABILITY

The Seller shall be under no liability whatsoever for any failure or delay in performing the contract by reason of the unavailability of the goods or materials whether due to general shortage or otherwise and in these events the Seller shall be at liberty to cancel all or any part of the contract without liability to the Buyer and shall not be responsible for preferring one contract to another nor for satisfying the Seller's own requirements in preference to those of the Buyer.

5. PAYMENT

Unless otherwise specified in writing by the Seller, the Buyer shall pay to the Seller the amount of the Seller's invoices within 28 days from the date of each invoice without any withholding or deduction and in default of payment of any invoice rendered by the Seller to the Buyer (whether or not relating to the contract) the Seller shall be at liberty to withhold or to cancel all or any consignments or services under the contract without being under any liability to the Buyer for so doing. Interest at the rate shown on the face of this document is to be paid by the Buyer to the Seller on overdue accounts.

6. CANCELLATION

The Buyer may at any time cancel any order provided always that the Buyer shall pay to the Seller the latter's production expenses, costs, charges and losses of profit in relation thereto.

7. FORCE MAJEURE

The Seller shall be under no liability whatsoever for any failure or delay in performing the contract by reason of war terrorism political or civil disturbances strikes lockouts the actions of any Government shipping problems fires or any other cause whatsoever beyond the reasonable control of the Seller, and the Seller shall have the right in any such circumstances either to extend the contractual time for delivery by such period as it considers reasonable, of which due notice shall be given to the Buyer or to cancel the contract in whole or in part without liability to the Buyer.

8. TENDERS AND SPECIFICATIONS

- (a) In the case of tenders providing for erection or installation of equipment, the Seller's prices will not include foundations for machinery, site clearing, special transport and lifting facilities required on site and alteration to buildings, unless otherwise specifically stated in writing by the Seller.
- (b) Tenders which include erection or installation are based upon the work being executed during normal working hours and overtime will be charged extra.
- (c) Prices quoted in the Seller's tender are based on current costs of materials including bought-but equipment, labour, transport and statutory obligations and the Seller therefore reserves the right to adjust prices, up or down, should cost variations occur between the date of tender and completion of the work and the Buyer shall pay such revised prices.
- (d) No warranty or guarantee is given by the Seller in relation to performance figures quoted by it unless the Seller has specifically guaranteed them in writing. Performance figures specified in the Seller's tender or in its sales literature are based on tests carried out at the Seller's works and represent the performance the Seller could reasonably expect to achieve under normal conditions and as such are not specifically guaranteed performance figures.
- (e) All specifications, drawings and details of weight and dimensions submitted with the Seller's tender are approximate only. Descriptions and illustrations contained in the Seller's catalogue and other publicity material are intended only to present a general idea of the goods described therein and none of these shall form part of a contract.
- (f) Specifications and plans submitted by the Seller for layouts, foundations and structural alterations are based upon the Seller's experience, but the Seller will not accept responsibility for any alterations involving the supply of additional or different materials or additional labour charges in the case of installation work brought about by local conditions.

9. PROPERTY AND RISK

- (a) Risk of loss or damage to the goods or materials and each consignment thereof shall pass from the Seller to the Buyer when the carrying vehicle transporting the goods or materials or any consignment thereof arrives at the Buyer's premises.
- (b) Title to the goods and materials or any consignment thereof shall remain with the Seller until receipt in full, without any deduction or withholding by the Seller, of the price of the goods or materials or any part thereof together with the Seller's charges (if any) for removal storage maintenance and insurance of the goods and materials or any consignment thereof. If the Buyer shall convert the goods and materials or any consignment thereof or incorporates the goods or materials or any consignment thereof with another item to make new or revised goods or materials the Seller shall be given the ownership of such new or revised goods and materials as security for the full payment of what the Buyer owes to the Seller, the ownership of such new or revised goods or materials being deemed to be transferred to the Seller through and at the time of the operation by which the goods or materials or any consignment thereof are converted into the new or revised goods or materials. Until the moment of full payment of what is owed to the Seller the Buyer shall keep the goods or materials or any consignment thereof and the new or revised goods and materials for the Seller in its capacity of fiduciary owner and shall insure the same against risk of loss or damage to the full value thereof and shall store and mark the same in such a way that they are clearly the property of the Seller. Notwithstanding the foregoing the Buyer shall be entitled to sell the goods or materials or any consignment thereof and any new or revised goods and materials to a third party (other than a subsidiary of or a company within the same group as the Buyer) in the normal course of its business on condition that so long as the Buyer has not discharged all amounts owing to the Seller the Seller shall be entitled to the benefit of all claims the Buyer has against its sub-purchasers emanating from such transactions which benefit the Buyer shall formally assign to the Seller when called upon to do so.

10. SCOPE OF CONDITIONS

These conditions of sale and the provisions appearing on the face of this document represent the entire agreement between the Seller and the Buyer in respect of the sale and purchase of the goods and materials and the services rendered the subject of the contract and shall govern the contract to the exclusion of any other provisions contained in any other documents issued by either party unless specifically referred to in writing by the Seller. No agent or employee of the Seller has the Seller's authority to alter or vary these conditions of sale.

11. LAWS OF ENGLAND

The contract between the parties, these conditions and the rights and obligations of the parties shall be governed, interpreted and construed solely in accordance with the Law of England.

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