

# TERMS OF BUSINESS

## 1. **Contract**

- 1.1 All orders are placed under these terms of business which exclude any other terms of business that you, the buyer, seek to impose even though they may be submitted in a later document and/or purport to exclude our terms of business.
- 1.2 No contract comes into existence until we have accepted your order.
- 1.3 Quotations are open for acceptance for 30 days provided not previously withdrawn.
- 1.4 "Incoterms 1990" means the international rules for the interpretation of trade terms of the International Chamber of Commerce. Unless the context otherwise requires, any term which is defined by the provisions of Incoterms 1990 shall have the same meaning in these terms of business.
- 1.5 Our sales representatives are not authorised to vary these terms, or to make any representations on our behalf.
- 1.6 No amendment to these terms of business may be made unless expressly accepted by us in writing.
- 1.7 Nothing in these terms of business shall affect the statutory rights of a buyer who deals as consumer.

## 2. **Orders and specifications**

- 2.1 We reserve the right to make any changes to specifications which are required so that goods will conform with any applicable safety or other statutory requirements; or
- 2.1.1 do not materially affect the quality or performance of the goods.
- 2.2 Cancellation is not permitted except where expressly agreed in writing by one of our directors. If we agree to cancel you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

## 3. **Price**

- 3.1 Where no price has been quoted (or a quoted price is no longer valid) the price is as listed in our published price list current at the date of acceptance of the order.
- 3.2 Unless otherwise stated all prices are EXW our premises in Hamburg, goods unpacked, exclusive of VAT.
- 3.3 We reserve the right, by giving you notice, at any time prior to delivery to adjust the price of the goods to take account of any increase in our costs owing to fluctuations in currency exchange rates or other factors beyond our control.

## 4. **Payment**

- 4.1 Unless agreed otherwise, payment is due with our invoice.
- 4.2 Time for payment is of the essence. We reserve the right to charge interest at the rate of 3% above Barclays Bank Plc's base rate for the time being in force on overdue amounts.
- 4.3 We reserve the right at any time at our discretion to demand security for payment before continuing with or delivering an order.
- 4.4 You do not have the right to set-off counterclaims against the price of the goods.

## 5. **Delivery**

- 5.1 Unless agreed otherwise, delivery will be made EXW our premises in Hamburg.
- 5.2 Time of delivery is not of the essence. Any date mentioned is given only as a guide and we are not liable for any loss whatsoever arising from our failure to deliver on the stated date.
- 5.3 Goods may be delivered in advance of any scheduled delivery date after giving you reasonable notice.
- 5.4 We reserve the right to deliver by instalments and to invoice each delivery separately.
- 5.5 If you fail to take delivery of the goods or fail to give adequate delivery instructions at any time stated for delivery then, without prejudice to any other right or remedy we may have, we may store the goods until actual delivery and charge you for storage.

## 6. **Risk**

The goods are at your risk as soon as they are delivered.

## 7. **Title**

- 7.1 Ownership of the goods does not pass to you until:
- 7.1.1 payment due under all your contracts with us is made in full; or
- 7.1.2 you sell the goods, in which case title to the goods which you sell is deemed to pass to you immediately prior to delivery to your customer.
- 7.2 Until ownership of the goods passes to you:
- 7.2.1 you hold the goods as fiduciary agent and bailee for us; and
- 7.2.2 the goods must be kept in good repair and insured for an amount equal to the contract price.
- 7.3 We may at any time revoke our permission to sell and use the goods by giving you written notice if any amount due to us under any contract with you is overdue by more than 7 days or if we have bona fide doubts about your solvency.
- 7.4 Your right to sell and use the goods automatically ceases if:
- 7.4.1 you make any voluntary arrangement with your creditors or become subject administration order, or (being an individual or firm) become bankrupt or (being company) go into liquidation.
- 7.4.2 a receiver or administrative receiver is appointed over any of your property;
- 7.4.3 you cease, or threaten to cease, to carry on business; or
- 7.4.4 we reasonably apprehend that any of the events mentioned above is about to occur and we notify you accordingly.
- 7.5 If your right to sell and use the goods is terminated under the above provisions, you must place any of the goods under your control and unsold at our disposal and allow us to remove them from your premises.

## 8. **Insolvency**

If you make any voluntary arrangement with your creditors, become subject to an administration order, have a receiver or administrative receiver appointed over any of your property, go into liquidation or cease to carry on business, then we shall be entitled to cancel the contract or suspend further deliveries under the contract without any liability to you, 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.

## 9. **Inspection**

- We shall not be liable for any shortage or damage to the goods on delivery unless you comply with all of the following conditions:
- 9.1 you must whenever possible inspect the goods on delivery;
- 9.2 where the goods cannot be inspected on delivery then the delivery note must be marked "not inspected";
- 9.3 you must give us written notice of the alleged shortage or damage within 8 days of delivery; and
- 9.4 you must give us a reasonable opportunity to inspect the goods before you use, alter or modify them.

## 10. **Warranties**

- 10.1 We have title to the goods and the right to sell them.
- 10.2 All specifications, drawings and particulars of weights, dimensions and performance which we provide are approximate only unless otherwise stated.
- 10.3 If on delivery, the goods are found to be in a condition or form that but for this condition would have entitled you to terminate the contract or claim damages, we reserve the right to repair or replace the goods.
- 10.4.1 We shall repair or at our option replace goods found to be defective because of faulty design, manufacture, materials or workmanship, during a period from delivery correlated with the rate of your use of the goods as follows:-
- | <u>Period from delivery</u> | <u>Rate of Use (per working day)</u> |
|-----------------------------|--------------------------------------|
| 6 months                    | 1 x 8 hour shift                     |
| 3 months                    | 2 x 8 hour shift                     |
- 10.4.2 Goods repaired and replaced by us under the above warranties shall be returned to you, carriage and packing paid by us. The mode of carriage and the choice of packing shall be at our discretion.
- 10.4.3 This warranty does not extend to consumables or to defects caused by improper, installation, improper or abnormal use, improper maintenance, rust or pollution, unauthorised repair or modification of the goods or faulty design and manufacture resulting from our use of your specification.
- 10.4.4 To claim the benefit of this warranty you must inform us of a relevant defect as soon as is practicable after you discover it and return the goods to us, carriage and packing paid by you. The goods will be at your risk in respect of accidental loss while in transit to us.
- 10.5 In return for the benefit of these warranties, you agree that all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.6 Each of the sub-clauses in this clause is to be treated as separate and independent.

## 11. **Liability**

- 11.1 We are not liable for any consequential or indirect loss suffered by you, whether it arises from breach of a duty in contract tort or in any other way including negligence. Non exhaustive illustrations of consequential or indirect loss would be loss of profits; loss of contracts; loss of goodwill; liability to third parties.
- 11.2 In respect of direct loss, our total liability for any one claim or for the total of all claims arising from any one act or default (whether arising from our negligence or otherwise) shall not exceed the cost of repair or replacement of the goods.
- 11.3 If the goods are to be manufactured or modified to your specification:
- 11.3.1 you shall indemnify us against all loss, damages, costs and expenses incurred by us in respect of a claim brought by any third party for loss, injury, or damage (including but not limited to a claim for infringement of intellectual property rights) resulting from our use of your specification;
- 11.3.2 we shall not be responsible if the goods do not meet applicable British and/or international standards unless we specifically warrant that the goods are manufactured to comply with a particular standard.
- 11.4 We shall not be responsible for any direct or indirect loss suffered by you arising from your use of the goods in excess of the catalogue ratings.
- 11.5 Nothing in this clause is deemed to exclude or restrict our liability to you for death or personal injury resulting from our negligence.

## 12. **Force Majeure**

- 12.1 We are not liable for any failure to deliver the goods arising from circumstances outside our control, which would include Act of God, war, riot, sabotage, 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.
- 12.2 If the circumstances preventing delivery continue for 3 months, either party may cancel the contract immediately by notice to the other.
- 12.3 If the contract is cancelled in this way we are not liable to compensate you for any loss or damage caused by the failure to deliver.

## 13. **Notices**

Any notice given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business.

## 14. **Applicable Law**

English law applies to this contract and any dispute arising in connection with it is subject to the non-exclusive jurisdiction of the English courts.