

In these Conditions "the Seller" means Endecotts Limited and any subsidiary of the Seller by which the goods are sold

1. ORDERS

(a) All quotations are not binding on the Seller and a contract (herein after referred to as "the contract") will only come into being upon acceptance by the Seller of the Buyer's order and the following conditions shall be deemed to be incorporated therein.

(b) Engagements made by the Seller's agents or representatives are only valid when confirmed in writing by the Seller.

2. WARRANTY; LIMIT OF RESPONSIBILITY

(a) The Buyer shall inspect all goods supplied by the Seller immediately on the arrival thereof and shall within 7 days from such arrival give notice in writing to the Seller of any reason whereby it alleges that the goods are not in accordance with the contract. If the Buyer shall fail to give such notice, the goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly. Any use of the goods by the Buyer will be deemed acceptance of the goods by the Buyer. Any samples supplied by the Seller are supplied solely to enable the buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample and accordingly the Buyer shall take the goods at its own risk as to their corresponding with the sample.

(b) The Seller warrants that it will (at the Seller's choice) either replace or refund the invoice value of any goods which are found within a period of 7 days from the date of delivery of such goods ("the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Seller in respect of the goods. The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Seller) shall in all cases be limited to replacement or refund as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period; and the Seller shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or order or in respect of any delivery or installment of an order or any part thereof shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order, delivery or installment or any part of the same order, delivery or installment. The Seller will require a reasonable period of time to carry out any replacement.

(c) Where the Seller fabricates the Buyer's own material, the work is undertaken on the express understanding that the Seller cannot be responsible for any distortion, faults or defects which appear or develop during or are caused by the work, howsoever arising even if resulting from any fault, negligence or mistake or the Seller. The Seller gives no guarantee or warranty of any kind and shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

3. PRICE

(a) The price stated in the contract is based on the cost to the Seller of materials, fuel and power, transport and labour at the date of acceptance of the order or quotation (whichever is earlier). If at the date of dispatch of the goods from the Seller's works there has been any increase in all or any of such costs, the price payable for the goods will be increased accordingly without prior notice

(b) Where the price for the goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.

(c) There shall be added to the price for the goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the goods (whether initially charged on or payable by the Seller or the Buyer) and (where appropriate) the freight and other charges.

4. DELIVERY AND COMPLETION DATES

(a) The delivery or performance dates specified in the contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery. The Seller will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Seller's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, late delivery or non-delivery or non-performance by suppliers or subcontractors, governmental order or intervention (whether or not by having the force of law) or any other cause whatever beyond the Seller's control or of any unexpected or exceptional nature.

(b) No delay shall entitle the Buyer to reject any delivery or any further installment or part of the order or any other order from the Buyer or to repudiate the contract or the order.

5. PAYMENT

(a) Accounts are due for payment at the end of the month following dispatch of the goods from the Seller's works unless specified otherwise by the Seller in writing. Prompt payment is a condition precedent to future deliveries.

(b) The Seller may before executing an order require the Buyer to prove to the satisfaction of the Seller that it will fulfill all its obligations and make payment on the due date or dates. Should the Buyer fail to satisfy the Seller in this particular the Seller reserves the right to rescind the contract forthwith and with notice and without liability of any kind to the Seller and without prejudice to any claim for damages by the Seller.

(c) The Seller shall be entitled to charge interest on any sums not paid on the due dates. Such interest shall be calculated on a day to day basis on the amount outstanding at the rate of 4% above the arithmetic average for each day of the published base rate of Lloyds TSB plc.

6. QUANTITIES

The Seller shall be deemed to have fulfilled the contract by delivery of a quantity within ten per cent either way of the quantity ordered and the Buyer shall pay at the contract rate for the quantity actually delivered and shall not be entitled to make any claim in respect of the said variations in quantities.

7. DEFAULT OR INSOLVENCY OF BUYER

If accounts due from the Buyer to the Seller shall become overdue for 14 days or more or if the Buyer shall make default in or commit a breach of the contract or of any other of its obligations to the Seller or if any distress or execution shall be levied upon the Buyer's property or assets or if the Buyer shall make or offer to make any arrangements or composition with creditors or commit any act of bankruptcy or if any petition or receiving order or similar process shall be presented or made against it or if the Buyer is a limited company and any resolution or petition to wind up its business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver or administrative receiver or similar officer of its undertaking, property or assets or any part thereof shall be appointed, the Seller shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination being posted to the Buyer's last known address any subsisting contracts shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise.

8. LIEN

The Seller shall in respect of all unpaid debts due from the Buyer under the contract or any other contract have a general lien on all goods and property of the Buyer in its possession and shall after the expiration of 14 days' notice to the Buyer be entitled to dispose of such goods and property as it deems fit and apply the proceeds towards such debts.

9. DELAYED ACCEPTANCE

If for any reason the Buyer is unable to accept delivery of the goods at the time when the goods are due and ready for delivery the Seller may if its storage facilities permit and at its option store the goods and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of its so doing. This provision shall be without prejudice to any other claim which the Seller may have in respect of the Buyer's failure to take delivery at the appropriate date.

10. PASSING OF RISK AND TITLE

- (a) Risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer.
- (b) Notwithstanding sub-clause (a) legal and beneficial ownership of the goods shall remain with the Company until payment in full has been received by the Company.
- (i) for those goods;
- (ii) for any other goods supplied by the Company;
- (iii) of any other monies due from the Buyer to the Company on any account.
- (c) Until property in the goods passes to the Buyer under sub-clause (b) above the Buyer shall:
- (i) be bailee of the goods
- (ii) keep the goods separately and readily identifiable as the property of the Company.
- (d) (i) Notwithstanding sub-clause (b) above the Buyer may (as between it and its customer only) as principal in the ordinary course of its business sell the goods by bona fide sale at full market value or in the ordinary course of its business use the goods
- (ii) Goods shall be deemed sold or used in the order delivered to the Buyer;
- (iii) Without Prejudice To (d) (i) Above, Any Resale By The Buyer Of Goods In Which Property Has Not Passed To The Buyer Shall (As Between The Company And The Buyer) Be Made By The Buyer As Agent For The Company.
- (e) (i) If goods in which property has not passed to the Buyer are mixed with or incorporated into other good the property in those other goods or the proceeds of sale thereof shall be held on trust by the Buyer for the Company.
- (ii) the Buyer shall keep any proceeds of sale as referred to in sub-clause (e) (i) above in a separate account and the Company shall have the right to trace such proceeds (according to the principles in re Halletts Estate (1880) 13 Ch D 696).
- (iii) Upon accounting to the Company for the entire proceeds of sale made under sub-clauses (d) (iii) and (e) (i) above, the Company will pay to the Buyer a commission equivalent to the difference between the sums owed to the Company and the value of such proceeds.
- (f) The Buyer assigns to the Company all rights and claims the Buyer may have against its own customers and others in respect of goods specified in subclauses (d)(iii) and (e)(i) above.
- (g) At any time prior to property in goods passing to the Buyer (whether or not any payment to the Company is then overdue or the Buyer is otherwise in breach of any obligation to the Company) the Company may without prejudice to any other of its rights:
- (i) Retake possession of all or any part of the goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;
- (ii) Require delivery up to it of all or any part of the goods;
- (iii) Terminate the Purchaser's authority to resell or use the goods forthwith by written notice to the Buyer which authority shall automatically terminate (without notice) upon any insolvency of the Buyer or its going into liquidation as defined in the Insolvency Act 1986) or it having a receiver or other similar.
- (iv) officer appointed or calling a meeting of its creditors or any execution or distress being levied on goods in its possession.
- (h) The company may at any time appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- (i) Each clause and sub-clause of this clause is separate, severable and distinct.

11. PATENTS TRADE MARKS ETC.,

The Buyer shall indemnify the Seller against all actions, claims, proceedings, accounts, damages, penalties, costs (including the cost of defending any legal proceedings) and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specifications or instructions (whether express or implied) which involves the infringement of any letters patent, trade mark, registered design, copyright or any other intellectual property right or which constitutes the tort of passing off.

12. INDEMNITY

The Buyer agrees upon demand to indemnify the Seller against all losses, damage, injury, costs and expenses of whatever nature suffered by the Seller to the extent that the same are caused by or related to:-

(a) designs, drawings or specifications given to the Seller by the Buyer in respect of goods produced by the Seller for the Buyer; or

(b) defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in goods produced by the Seller for the Buyer; or

(c) the improper incorporation, assembly, use, processing, storage or handling of goods by the Buyer.

13. SUBCONTRACTING

The Seller reserves the right to subcontract the fulfillment of the order or contract (including any installation) or any part thereof.

14. RISK AND DAMAGE IN TRANSIT

(a) After dispatch of the goods from the Seller the risk of any loss or damage to or deterioration of the goods from whatever cause shall be borne by the Buyer.

(b) If the Seller undertakes delivery of the goods it shall not be liable:

(i) for any loss damage deviation delay or detention of the goods in the course of transit, or for mis-delivery unless the Buyer gives to the Seller and the Carrier within 3 days of receipt of the goods written notice of the Buyer's complaint.

(ii) for non-delivery or non-arrival of the whole or any consignment of the goods or any separate package unless the Buyer shall give to the Seller and to the Carrier a written notice thereof within 14 days of the date or notification of the dispatch of the goods.

15. VARIATION OF TERMS

Subject as aforesaid any variation of the terms and conditions of any contract shall become binding only if confirmed in writing by the Seller and the Buyer.

16. PROPER LAW

The construction validity and performance of this contract shall be governed by the Law of England. Paragraph headings shall not affect the construction of these conditions.

17. SELLER'S CONDITIONS TO PREVAIL

These Conditions of Sale shall override any terms or conditions sought to be incorporated in any way by the Buyer in the contract.