

STANDARD CONDITIONS OF CONTRACT FOR THE SALE OF GOODS

I. The Contract

(A) Unless otherwise stated in writing by the company making the Offer ('the Seller'), goods are supplied by the Seller only on these Conditions, and no variation there of or addition thereto, whether contained in any document emanating from the other party to the contract ('the Purchaser') or made orally by any person acting or purporting to act on behalf of the Seller, shall be of any effect. The acceptance (howsoever made) by the Purchaser of any offer made by the Seller to sell the goods or any of them the subject of the Contract (an 'Offer') shall incorporate these Conditions into the contract constituted by acceptance (howsoever made) by the Purchaser of the Offer, ('the Contract') to the exclusion of and as superseding all terms and conditions inconsistent therewith or additional thereto which are not expressly confirmed in writing by the Seller as being applicable and (i) which are otherwise to be implied by law but are capable of lawful exclusion, or (ii) which have been sought to be imposed by the Purchaser at any time in relation to the transaction

(B) Any quotation issued by the Seller or by any parent, subsidiary or associated company of the Seller (a 'Quotation') may be amended or withdrawn at any time prior to the formation of any contract concluded by reference thereto. No quotation shall constitute an offer capable of acceptance

(C) The giving by the Purchaser of any delivery instructions for the goods or any of them the subject of the Contract ('the Goods') or any part thereof, or acceptance by the Purchaser of delivery of the Goods or any part thereof, or any conduct by the Purchaser in confirmation of the transaction after receipt by the Purchaser of the Offer, shall constitute unqualified acceptance by the Purchaser of the Offer and of these Conditions

(D) The acceptance (howsoever made) by the Purchaser of an Offer shall be deemed to constitute an acknowledgment by the Purchaser that the Contract will not have been induced by any representation save such (if any) as may be expressly specified in the Offer or in any written acceptance by the Purchaser of an Offer (an acceptance of Offer)

(E) The Seller shall be under no liability, nor shall the Purchaser be entitled to any remedy, by reason of any misrepresentation made to the Purchaser or any agent of the Purchaser by or on behalf of the Seller where the misrepresentation results from information derived from a third party which the Seller has received and acted upon in good faith and without reason to disbelieve or doubt

(F) The Contract is personal to the Purchaser who may not assign it without the prior written consent of the Seller, and the provisions of the Contract shall survive its termination for as long as may be necessary to give efficacy thereto

2. Information, Specifications and Manufacture

Where the Goods are to be supplied by the Seller in accordance with any information or specifications prepared, furnished or supplied to it by the Purchaser or with the Purchaser's specifications or instructions, express or implied.

(1) the Purchaser hereby warrants the accuracy and completeness of all such information specifications and instructions, and that it has full right and title to procure the Seller to supply the Goods in accordance therewith;

(2) the Purchaser shall indemnify and keep indemnified the Seller against all proceedings, damages, penalties, costs, expenses, claims, royalties, payments, demands and liabilities of what ever nature, (including in respect of any error, omission or inaccuracy in such information, specifications or instructions, or in respect of the infringement of or of any right attributable to any letters patent, registered design, trade mark, trade name, copyright or proprietary right or otherwise howsoever) resulting directly or indirectly from the fulfilment or attempted fulfilment by the Seller of the Contract.

3. Price and Payment

(A) Unless otherwise stated in writing the purchase price of the Goods under the Contract ("the Purchase Price) is net ex-works.

(B) Unless otherwise stated in writing, the Purchase Price excludes, and the Purchaser shall pay to the Seller in addition thereto:-

(i) Value Added Tax (or any other or substituted form of tax or levy), which will where applicable be charged at the rate in force at the date of the appropriate tax point.

(ii) All taxes, duties and charges whatsoever (whether or not imposed by any Government or the authority) payable in respect or by reason of the sale, delivery, carriage or export of the Goods or any part thereof, whether or not the same were payable at the date of the Quotation (if any) or of the Offer, and including (without prejudice to the generality of the foregoing) all packing, carriage, freight, delivery and unloading costs and charges, charges for import, export or currency licences, sales, turnover or purchase taxes, duties of customs and excise, landing and handling charges, port and airport dues and charges and the cost of insurance.

(iii) Any excess over the amount allowed by the Seller in quoting the price for supplying or delivering the Goods where such excess results from any error or omission on the part of the Seller its servants or agents affecting the Purchase Price or its calculation.

(iv) in respect of the pallets on which the Goods are supplied, an amount calculated at the Seller's rate therefor current at the time of delivery. Full credit will be given upon the return of such pallets at the Purchaser's expense in good and serviceable condition to the point of despatch within three months of delivery.

(C) All monies due to the Seller hereunder shall, unless otherwise agreed in writing, be paid by the Purchaser to the Seller in full by the 20th day of the month following the month of issue of the Seller's invoice. The Purchaser shall not be entitled to withhold payment or make any deduction therefrom in respect of any set-off or counterclaim

(D) If the Purchaser fails to pay any monies due to the Seller hereunder the Seller shall be entitled (without prejudice to any other right hereunder):-
(i) to withdraw without notice all credit facilities afforded to the Purchaser or any associate, subsidiary or holding company of the Purchaser (an 'Associated Company'), so that any monies then owing therefrom to the Seller shall forthwith become due and payable.
(ii) to charge interest thereon from the date when due until payment at the rate of four (4) per cent per annum above the National Westminster Bank PLC's Base Rate for the time being in force
(iii) to suspend wholly or in part future deliveries of goods to the Purchaser or to any Associated Company until such time as all such monies have been paid in full.

4. Delivery

(A) Unless otherwise agreed in writing, any time or date for the despatch or delivery of the Goods, whether specified in the Quotation (if any) or in the Offer or otherwise given by the Seller, shall constitute a business estimate made by the Seller in good faith, but shall not bind the Seller.

(B) Unless otherwise agreed in writing the Seller shall be under no obligation to make delivery of the Goods before payment of all monies then due to it hereunder.

(C) Unless otherwise agreed in writing, the Purchaser shall be obliged to accept delivery of the Goods without the necessity of any prior notification thereof by the Seller. If the Purchaser fails to accept any delivery of the Goods within fourteen days of being notified that they are ready for delivery, the Purchaser shall pay to the Seller all storage, handling, insurance, consequential and other charges and costs arising from the delay, and the Seller shall be at liberty to arrange for the storage of the Goods elsewhere at the Purchaser's expense.

(D) Where deliveries are made by bulk pressure tanker or similar means the Purchaser shall be solely responsible for ensuring that such tanker is correctly connected to the receiving hopper (or other such device) and shall be liable for any loss or damage, direct or indirect, arising or ensuring from any failure to do so. The weight area or volume of the Goods delivered to the Purchaser shall be deemed to be that ascertained upon despatch the Purchaser by tanker.

(E) Unless otherwise stated in writing the Seller shall be entitled to make partial deliveries, and to determine the route and manner of delivery, of the Goods, and shall for the purpose of Section 32(2) of the Sale of Goods Act 1979 be deemed to have the Purchaser's authority to make such contract with any carrier as to the Seller shall seem reasonable.

(F) To the full extent permitted by law, but not further or otherwise, and without prejudice to all other rights of the Seller, no liability whatsoever shall be capable of attaching to the Seller for or in respect of loss, injury or damage of any kind whatsoever arising out of or in connection with delay in or failure to make delivery of the Goods or any part thereof including (without prejudice to the generality of the foregoing) delivery of short weight, loss of or damage to the Goods whilst in transit and consequential loss of any kind, where the same shall be due to any cause whatsoever including the negligence or wilful default of the Seller or its servants or agents, nor shall the Purchaser be released from its obligation to pay the aggregate of the Purchase Price and of all (if any) other monies due to the Seller under any provision of these Conditions and of the Contract (the "Total Price"), unless:

(i) in the case of short weight or loss or damage to the Goods whilst in transit, written notice thereof is given by the Purchaser to the Seller within three days of the date of delivery, and

(ii) in the case of delay in or failure of delivery, written notice thereof is given by the Purchaser to the Seller within 21 days of the date upon which the Purchaser is notified that the Goods have been consigned for delivery unless the Purchaser proves that it was not reasonably possible for it to give such notice to the Seller within the appropriate period and that notice was given within a reasonable period

5. Licences

If it is necessary for the [awful fulfilment of the Contract:-

(i) for the Purchaser to hold or obtain any import, export, currency or other licence, consent or authority, the Purchaser shall be obliged to obtain the same;

(ii) for the Seller to hold or obtain any such licence consent, or authority, the Seller shall apply for the same but if the same is refused the Contract shall forthwith come to an end, and neither the Seller nor the Purchaser shall be under any liability in respect thereof.

6. Passing of Property, Risk and Insurance

(A) Notwithstanding delivery of the Goods or any part thereof the property in the Goods shall remain in the Seller until the Purchaser has paid the Total Price or, if earlier until the Goods have been mixed in the course of manufacture with other goods. Until that time the Purchaser shall hold the Goods as bailee for the Seller, shall store or retain them in such a way that they are clearly and separately identifiable as the goods of the Seller and shall if requested by the Seller deliver them to the Seller.

(B) The Goods are at the Purchaser's risk from the "risk point" being the first to occur of :-

(i) the passing of property in the Goods to the Purchaser; and
(ii) as the case may be :-

(a) the delivery of the Goods to the ace (if any) in the United Kingdom specified in the Offer for delivery of the Goods; or
(b) in the case of delivery FOB United Kingdom port, the time when the Goods pass the ship's rail; or
(c) in the case of delivery FOB Airport in the United Kingdom, the time at which the Goods are delivered into the charge of the air carrier or his agent or any other person named by the Purchaser or, in default thereof, chosen by the Seller

The expressions 'FOB' and 'FOB Airport' shall, to the extent of which such meanings are or otherwise, bear the meanings respectively ascribed thereto by Incoterms (1980 Edition).

(C) During the period of time (if any) from the risk point until the property in the Goods has passed to the Purchaser (the 'risk period'):
(i) the Purchaser shall effect and maintain insurance of the Goods in their full value and in the name of the Seller (the Purchaser's interest being noted on the policy) against all risks, including fire, flood, explosion, loss and damage whatsoever, and
(ii) the Seller shall in its absolute discretion be entitled, but shall not in any circumstances be bound, to effect and maintain such insurance (if any) of the Goods as it shall see fit.

(D) The Seller shall be under no obligation to give the Purchaser the notice referred to in Section 32(3) of the Sale of Goods Act 1979

7. Warranties, Conditions and Undertakings

(A) The Seller shall to the full extent permitted by law, but not further or otherwise, be under no liability whatsoever (including, without prejudice to the generality of the foregoing, any liability in tort or for consequential loss, damage or injury of any kind) for any defect in, or failure of, or unfitness for any purpose of the Goods or any part thereof whether the same be due to any act or omission of the Seller or its servants or agents, or to faulty design, workmanship or materials, or to any other cause whatsoever including the negligence or wilful default of the Seller or its servants or agents; and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, which are inconsistent with the provisions of this Condition and which are capable of lawful exclusion are hereby expressly excluded.

(B) Without prejudice to any rights of the Seller to rely on Section 26 of the Unfair Contract terms Act 1977, the acceptance (howsoever made) by the Purchaser of any Offer shall import a holding out, undertaking and acknowledgement by the Purchaser that:

(i) the Contract is made by the Purchaser in the course of a business;
(ii) it is mutually intended that the Seller shall transfer only such title to the Goods as the Seller may have;

(iii) save insofar (if at all) as shall be expressly acknowledged in writing in any Quotation, the Offer or the Acceptance of Offer, the Purchaser does not rely on the Sellers skill or judgement and has neither expressly nor by implication made known to the Seller the purpose for which the Goods are being bought;

(iv) any description given to the Goods by either party shall be deemed to be for the purposes of identification only and shall not In law operate to render the sale thereof a sale by description; and
(v) the provision by the Seller of a sample of the Goods shall not in law operate to render the sale a sale by sample.

8. Insolvency

If the Purchaser shall make default in or commit a breach of the Contract, or become insolvent or make or offer to make any arrangement or composition with creditors, or any resolution or petition to wind up the Purchaser (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of the Purchaser's undertaking, property or assets or any part thereof shall be appointed, or if there shall occur any corresponding or similar event under any other legal system to which the Purchaser may be subject, then, without prejudice to any claim or right which may accrue to the Seller or which it may otherwise make or exercise or to any obligation or liability to which the Purchaser may otherwise be subject, the Seller shall have the right forthwith to suspend and or determine the Contract by notice in writing to the Purchaser, and upon written notice of such Suspension or determination being posted to the Purchaser the Contract shall be deemed to have been suspended or determined (as the case may be).

9. Force Majeure

If the Seller is prevented (directly or indirectly) from performing any of its obligations under the Contract by reason of Acts of God, strikes, lockouts, trade disputes, fire, breakdowns, interruption of transport, Government action, or any cause whatsoever (whether or not the nature to those specified above) outside its control the Seller shall be under no liability whatsoever to the Purchaser and shall be entitled at its option (to be notified to the Purchaser in writing) either to cancel the Contract or to extend the time of its performance.

10. Proper Law

The Contract shall be construed and governed in all respects by English Law and, unless expressly agreed in writing, the Goods shall not be required to comply with any provisions of any other law. All disputes arising under or relating to the Contract shall be subject to the exclusive jurisdiction of the Courts of England, to which the parties hereby irrevocably submit.