

The Purchaser's attention is in particular drawn to the provisions of Condition 12. 1.

DEFINITIONS

The definitions in this Condition shall apply in these conditions:

Contract: any contract between the Seller and the Purchaser for the sale and purchase of the Goods, incorporating these conditions.

Goods: any goods agreed in the Contract to be supplied to the Purchaser by the Seller (including any part or parts of them). Purchaser: the person, firm or company who purchases the Goods from the Seller. Seller: Armfield Limited

2. GENERAL

- (a) Subject to any variation under Conditions 2(c) and/or 2(d) the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- (b) These conditions are only intended to be used with customers acting in the course of business. However, should a Purchaser be held to be acting as a "consumer" nothing in these conditions shall exclude or limit any statutory rights of that Purchaser which may not be excluded or limited due to their "consumer" status.
- (c) These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.
- (d) The Seller reserves the right to revise and amend these conditions from time to time.
- (e) Each order or acceptance of a quotation for Goods by the Purchaser from the Seller shall be deemed to be an offer by the Purchaser to buy Goods subject to these conditions.
- (f) No order placed by the Purchaser shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Purchaser.
- (g) The Seller shall not be liable for non-compliance with the terms of the Contract arising out of Force Majeure, fire, flood, failure of power supply, strike or action taken by employees, or any other cause beyond the Seller's reasonable control. Any order for Goods which is stipulated by the Seller to be subject to the payment of a deposit shall not be accepted by the Seller until the said deposit is received in cleared funds from the Purchaser.
- (h) Any order for Goods which is stipulated by the Seller to be subject to the payment of a deposit shall not be accepted by the Seller until the said deposit is received in cleared funds from the Purchaser.
- (i) The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts. The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- (j) No waiver by the Seller of any breach of the contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (k) If any of these provisions is found to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provision in question shall not be affected.
- (l) The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- (m) The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

3. QUOTATIONS

Any quotation given to the Purchaser may be amended by the Seller in the following circumstances, and the Purchaser agrees to pay any additional sums arising therefrom:

- (a) if the quotation is not accepted by the Purchaser within 30 days or any greater period specified in it; or
- (b) at any time before receipt of an unqualified order from the Purchaser or;
- (c) if costs are altered by changes in taxation, duty, currency exchange rates or cost of transportation or materials being changes outside the control of the Seller; or
- (d) if extra services or materials are required at the request of the Purchaser; or
- (e) if full information is not made available to the Seller to enable accurate preparation of the quotation, even where there has been previous acceptance by the Seller of the Purchaser's order.

4. PRICE AND PAYMENT

- (a) Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Seller's quotation. The Purchaser further agrees that the Seller shall have the right to increase the price of the Goods before delivery if costs are altered by changes in taxation, duty, currency exchange rates or cost of transportation, materials or production being changes outside the control of the Seller, or where the increase is due to any act or default of the Purchaser, including without limitation the cancellation by the Purchaser of part of any order or non-adherence to agreed call-off or scheduled delivery arrangements. If it is subsequently revealed that the Seller is unable to get credit insurance to cover the full value of outstanding orders an alternative payment method will need to be agreed between both parties.

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- (b) All prices are quoted as the ex-works price, unless otherwise stated, net of VAT. Carriage from the Seller's works or the site of manufacture to the destination specified by the Purchaser will therefore be an additional cost.
- (c) The invoices for each delivery shall be sent upon dispatch of the Goods, except where the Seller stipulates C.W.O. or C.O.D. terms, and the Purchaser shall pay the same in cleared funds within thirty days following the date of the invoice (unless alternative payment terms have been agreed in writing). The Purchaser shall ensure that sufficient funds are remitted to ensure that the Seller receives the full invoiced amount after deduction of any applicable bank charges. The Seller reserves the right to charge interest at the rate of 2% per month compound on unpaid amounts outside these terms.
- (d) If the Purchaser is in default with any payments due and owing under the Contract then the Seller shall be entitled to suspend work and withhold any further deliveries of Goods to the Purchaser.
- (e) Release documentation and Certificates of Conformity will normally be provided on request.
- (f) If at any time any sum of money becomes payable by the Seller to the Purchaser under or in connection with the Contract (or any breach thereof by the Seller), the Seller shall be entitled in addition to any rights of set-off conferred by law, to set-off against such sum any amount then due, or which may at any time thereafter become due, to the Seller from the Purchaser under the Contract or any other contract, order or transaction between the Seller and the Purchaser.

5. DELIVERY

- (a) Delivery dates are estimates only and not guaranteed. Reasonable endeavours will be made to meet them but the Seller shall not be liable for any failure to do so and any consequent right of the Purchaser to repudiate the Contract is expressly excluded.
- (b) The Seller reserves the right to deliver Goods before the acknowledged delivery date. The Seller shall not however be obliged to accept any request by the Purchaser for a variation to the acknowledged delivery date.
- (c) If the Goods (including any ancillary services) are delivered/completed in instalments, the Seller shall be entitled to invoice for each instalment as and when each instalment is delivered/completed notwithstanding non-delivery/non-completion of other instalments or other default by the Seller.
- (d) The Seller shall seek to obtain any necessary export/import licence to effect the delivery of the Goods but shall be under no obligation or liability in respect of any delay or failure in obtaining any such licence. The seller will also not be liable if delivery is delayed by UK or the customer's customs and excise agencies.
- (e) All orders for export from the UK shall be in accordance with the relevant terms in INCOTERMS 2010 Edition or any amendment or re-publication thereof for the time being in force at the date of the Seller's acceptance of the Purchaser's order.
- (f) Any liability of the Seller for non-delivery of the Goods shall be limited to either (at the Seller's option) replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. DESCRIPTION AND DATA

- (a) The Goods will be supplied substantially as described in the Contract but the right is reserved to make design changes which do not lower their performance, adversely affect their mechanical interchangeability or increase their price.
- (b) The Seller shall make every effort to ensure the accuracy of technical data or literature relating to the Goods, but the Seller (so far as permitted by law) accepts no liability in contract, tort or otherwise for any damage or injury arising directly or indirectly from any error or omission in such technical data or literature.

7. GUARANTEE

- (a) Subject to the price or a proportionate part of the price of the Goods having been paid in full, the Seller guarantees at its discretion to refund the price of, or to repair or replace free of charge, any of the Goods found, to its satisfaction, to be defective within 24 months of the date of delivery owing to faulty design, materials or workmanship, provided that the Goods have not been modified or repaired other than by the Seller and have been operated, stored and maintained within the Seller's recommendations for use. In the case of Goods repaired or replaced by the Seller the guarantee shall terminate at the end of the original guarantee period.
- (b) Where Goods are to be returned under this guarantee the Purchaser must first contact the Seller and obtain a returns (RMA) number (or follow such other reasonable returns process as the Seller may stipulate). The Goods must then be delivered to the Seller's premises at the Purchaser's expense accompanied by a statement of the reason for the return within 6 weeks of the RMA number being issued. (c) If found not to be defective (or when the defect is attributable to the Purchaser's services, design, materials, storage, misuse or handling) Goods will be returned to the Purchaser at its expense and subject to a minimum testing charge of 15% of the invoice price plus VAT.
- (d) The Seller's liability under Condition 7(a) is the sole liability of the Seller as regards the quality, fitness, description or correspondence with sample of the Goods. Except in the case of death or personal injury caused by the Seller's negligence, all other representations (unless fraudulent), warranties, conditions, terms and statements in such regard, express or implied, statutory or otherwise, are excluded save where not capable of exclusion at law.
- (e) Apart from defects referred to in Condition 7(a), to which this condition shall not apply, the Purchaser shall inspect the Goods and notify the Seller of any defects or other non-conformance within 7 days from the date of delivery.
- (f) Goods shall not be considered defective for the purposes of these conditions unless they are not in accordance with any specification of the Purchaser accepted in writing by the Seller, or (if there is no such specification or to the extent that such specification is silent as to any aspect of the design, function, performance, tolerances, quality or characteristics of the Goods) the Goods do not conform to the Seller's published information (if any) or otherwise to the standards which the Seller considers normal or usual for products of the kind sold at a similar price. The Seller is not in a position to ensure that the Purchaser's specification is correct and/or sufficient for the purposes intended by the Purchaser and the Purchaser is solely responsible therefor. (g) The guarantee starts from the shipment date of the goods from the Seller to the Buyer.

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8. PASSING OF RISK AND PROPERTY

- (a) Where the Seller arranges delivery risk of loss or damage to the Goods shall pass to the Purchaser at the time the Goods are delivered. If Goods are to be delivered by the Purchaser's nominated carrier, at the Purchaser's cost, risk shall pass to the Purchaser upon delivery of the Goods by the Seller to that nominated carrier.
- (b) The property (including the legal, beneficial and equitable title) in the Goods shall not pass to the Purchaser until the whole of the price due for these Goods and all other goods agreed to be sold by the Seller to the Purchaser for which payment is then due, has been paid, and until payment the Purchaser shall hold the Goods as fiduciary agent and bailee for the Seller under the following provisions of this clause.
- (c) The Purchaser may only sell, pledge or charge or otherwise dispose of the Goods (or any part of them) or cause or permit the same to be mixed with or incorporated into other goods before title has passed on the basis that such sale shall be a sale of the Seller's property and it is conducted in the ordinary course of business for full market value. Should the Purchaser dispose of the Goods in this manner then the Seller's beneficial entitlement shall attach to the proceeds of sale.
- (d) The Seller shall be entitled at any time before title passes to repossess the Goods and the Purchaser hereby irrevocably authorises the Seller to enter any premises of the Purchaser for that purpose.
- (e) The Seller shall be entitled to maintain an action for the price of any invoice notwithstanding that title has not passed to the Purchaser.
- (f) The Seller shall have the option upon giving prior written notice to the Purchaser to rescind a Contract in the event of there being any sums due to the Seller whether under this Contract or any other contract. Notwithstanding such rescission the Seller shall have a right to maintain an action against the Purchaser for any balance of monies due to the Seller.

9. CLAIMS

The Seller shall not be liable in any of the following circumstances:-

- (a) where any error or defect in the Goods is due to inaccurate or imprecise instructions from, or any defective specification supplied by, the Purchaser; or
- (b) where the Seller has not been notified within 7 days after delivery of defects which would be revealed by normal examination of the Goods on delivery, or in relation to the transport of the Goods within such reasonable time as would enable the Seller to make complaint to the carriers by whom the Goods were transported.

10. INTELLECTUAL PROPERTY RIGHTS

- (a) The sale of the Goods and the publication of any information or technical data relating thereto does not imply, and the Seller gives no warranty as to, freedom from the patent, registered design or other industrial or intellectual property rights of third parties (whether arising or created before or after the date of delivery of the Goods) ("IPR") in respect of the Goods or any particular application thereof or any method in which the Goods are used or disposed of or any combination of the Goods with or into any other product (whether or not supplied by the Seller), whether or not that application, method or combination is the only application, method or combination in which the Goods can be disposed of or used.
- (b) The Purchaser warrants that any designs and specifications supplied or specified by it to the Seller will not involve the infringement of any third party IPR in the manufacture and sale of the Goods by the Seller.
- (c) The Purchaser undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any third party IPR arising out of or in connection with the matters described in Condition 10(b) above.

11. PURCHASER'S ITEMS

Items supplied by the Purchaser for the purposes of the Contract shall be of suitable quality and shall be provided free of charge in the quantities and at the times required by the Seller. Any defect in such items shall not entitle the Purchaser to rescind the Contract, reject the Goods, make deductions from the Contract price or claim damages in respect of such defect and the Purchaser shall indemnify and keep indemnified the Seller from and against all actions, demands, claims, proceedings, losses, or costs arising from the supply of defective items by the Purchaser. The purchaser is liable for any damage caused to the Seller's goods or property caused by defective items supplied by the Purchaser.

12. LIMITATION OF LIABILITY

- (a) Subject to Conditions 7 and 9, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:
- any breach of these conditions;
 - any use made or resale by the Purchaser of any of the Goods, or of any product incorporating any of the Goods; and
 - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- (b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- (c) Nothing in these conditions excludes or limits the liability of the Seller:
- for death or personal injury caused by the Seller's negligence; or
 - under section 2(3), Consumer Protection Act 1987; or
 - for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - for fraud or fraudulent misrepresentation.

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(d) Subject to Condition 12(b) and Condition 12(c):

- the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- the Seller shall not be liable to the Purchaser for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

13. TERMINATION

If the Purchaser commits any breach of these conditions or suffers or allows any execution to be levied upon it or becomes insolvent or commits an act of bankruptcy or enters into any arrangements or composition with its creditors or goes or is put into liquidation (other than solely for amalgamation or reconstruction while solvent) or if a receiver or administrator is appointed over any part of the Purchaser's business, the Seller may without prejudice to any rights which may have accrued or which may accrue to it: (a) terminate the Contract summarily by written notice; and/or (b) if 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. Title of the goods will not pass to the Purchaser until payment in full is received by the Seller.

14. CANCELLATION AND RETURNED GOODS

- (a) Cancellations will not be accepted for made-to-order items. Any cancellations for Goods which are not made-to-order may be accepted by the Seller in its sole discretion, if at all. If the Seller agrees to accept cancellation or part cancellation of the Contract, a charge of 20% of the total Contract price of the cancelled items or the complete value of the WIP (whichever is greater) will be payable by the Purchaser.
- (b) Except as provided in Condition 7 no returns are permitted without the Seller's prior agreement.
- (c) Storage, handling and packaging before and during return of the Goods must be appropriate for the Goods' mechanical, electrical and environmental requirements. All returns must be at the Purchaser's expense and the returned Goods must be received by the Seller in their original condition. If the Purchaser fails to return the Goods in their original condition, or the Seller otherwise refuses to accept the Purchaser's requested cancellation of the Goods after having received and tested the Goods returned by the Purchaser, the Seller reserves the right to charge a 20% administration fee for testing the returned Goods. Any Goods which have failed the testing process in this Condition 7(c) will, at the request of the Purchaser, be returned to the Purchaser at the Purchaser's expense.
- (d) For the avoidance of doubt if a Purchaser is contracting as a 'consumer' they may be entitled to cancel a Contract at any time within 7 working days beginning on the day after the Goods are received (provided that the Goods are not made-to-order items). In this case the Purchaser will receive a full refund of the price paid for the Goods. To cancel a Contract in this manner the Seller must be informed in writing. The Purchaser must also return the Goods to the Seller immediately, in the same condition in which they were received, and at the Purchaser's cost and risk. The Purchaser has a legal obligation to take reasonable care of the Goods while they are its possession.

15. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by registered post or by the recorded delivery service or transmitted by email or facsimile or other means of telecommunication which provides verifiable evidence of delivery and results in the receipt of a written communication in permanent form.

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