

**1. BASIS OF SALE**

- (a) The Seller shall sell and the Buyer shall purchase the goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any other such quotation is excepted or purported to be excepted, or any such order is made or purported to be made by the Buyer.
- (b) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- (c) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim of breach of, any such representations, which are not confirmed.
- (d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the seller.

**2. DOCUMENTS**

Unless otherwise specified all illustrations, drawings and printed descriptions are approximate only, all documents to be considered as confidential documents of which the Seller retains copyright. They remain the property of the Seller and must not be made accessible to third parties or reproduced without the Seller's written consent and must be returned to the Seller on request. The Seller reserves the right to make any alteration necessary.

**3. REGULATION IN FORCE AT DESTINATION**

The Buyer shall inform the Seller of all laws governmental or other regulations which must be observed during the execution of the contract.

**4. ORDERS AND SPECIFICATIONS**

No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until accepted by the Seller. The Buyer shall be responsible to the seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.

The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller)

The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification which do not materially affect their quality and performance.

No order which has been accepted by the Seller may be cancelled by the Buyer excepted with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 the Seller as a result of cancellation.

**5. PRICE OF GOODS**

The price of the Goods shall be the Seller's quote price.

All prices quoted are valid for 60 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller by giving written notice to the Buyer.

The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, quantities or increase of the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specification for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable, to pay to the Seller.

**6. PLACE OF FULFILMENT OF CONTRACT**

The place of fulfilment of contract is the works of manufacture in Newtownhamilton.

If a contract includes erecting, the site erecting is the place of fulfilment only as concerns our engagements relative to erecting

**7. TERMS OF PAYMENT**

- (a) Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after deliver of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer or the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered for the Goods.
- (b) The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, notwithstanding that the delivery may not have taken place and the property in the goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only on request.
- (a) If the buyer fails to make full payment on the due date then without prejudice to any other right remedy available to the Seller, the Seller shall be entitled
- to: -
- (1) Cancel the contract or suspend any further deliveries to the Buyer.
  - (2) Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
  - (3) Charge the Buyer interest (both before and after any judgement on the amount unpaid at the rate of four percent per annum above the Bank overdraft rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)
  - (4) Payment shall not be withheld or reduced on the ground of unsatisfactory fulfilment of contract and acknowledged by the Seller.
  - (5) Where extra costs are incurred by the Seller in the collection of overdue accounts, all such costs such as statutory interest, however so incurred, are the responsibility of the Buyer, they will be confirmed by writing to the buyer.

**(8) DELIVERY**

- (a) Any dates quoted for delivery of goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- (b) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- (c) If the buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may: -
- (1) Store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; of
  - (2) Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under Contract or charge the Buyer for any shortfall below the price under the contract.
- (d) The times for delivery given by us refer to the completion of manufacturing at the works and are not binding unless otherwise agreed upon.
- (e) Late delivery does not give the Buyer the right to withdraw from the contract nor entitle him to damages for losses due directly or indirectly to late delivery
- (f) The Buyer must provide sufficiently good road facilities to accommodate a 40-foot lorry on the erecting site.

**9. TRANSFER OF USE AND PASSING OF RISK**

- (a) Risk of damage to or loss of Goods shall pass to the Buyer:
- (1) In case of Goods to be delivered otherwise than at the Sellers premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods the time the Seller has tendered delivery of the Goods.
- (b) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payments in full of the price of Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is due.
- (c) Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Sellers fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and property sorted, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds property stored, protected and insured.
- (d) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods.
- (e) The Buyer shall not be entitled to pledge or in any way charge by the way of security for any indebtedness any of the Goods which remain the property of the Seller, but the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

**10. WARRANTIES AND LIABILITIES**

- (a) Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from the date of their initial use or months from delivery whichever is the first to expire.
- (b) The above warranty is given by the Seller subject to the following conditions: -
- (1) The Seller shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Buyer.
- (2) The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the goods without the Seller's approval.
- (3) The Seller shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the price for the goods has not been paid by the due date for payment.
- (4) The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty of guarantee as is given by the manufacturer of those parts to the Seller.
- (c) Any claim by the Buyer which is based on any defect in the quality or conditions of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 3 days from the date of delivery, the buyer must have reasonable particulars in writing to the seller or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly by writing, the Buyer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.
- (d) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or conditions of the goods or their failure to meet specification is notified to the Seller in accordance with these conditions the Seller shall be entitled to replace the goods (or the part in question) free of charge or, at the Seller's sole discretion, refunded to the Buyer the price of the goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

- (e) Except in the event of death or personal injury caused by the Sellers negligence, the Seller shall not be liable to the Buyer by reason of any representative, or any implied warranty, conditions or other term, or any duty at common law, or under the express terms of the contract for any consequential loss of damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, it's employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in conditions.
- (f) The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of delay in performing, or any failure to perform any of the Seller's obligations in relation to the goods, of the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as caused beyond the Seller's reasonable control:-
  - (1) Act of God, explosion, flood, tempest, fire or accident:
  - (2) War or threat of war, sabotage, insurrection, civil disturbance or requisition:
  - (3) Acts, restriction, regulations, byelaws, prohibitions or measures of any kind on the part of the government, parliamentary or local authority:
  - (4) Import or export regulations or embargoes:
  - (5) Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or a third party):
  - (6) Difficulties in obtaining raw materials, labour, fuel, parts for machinery:
  - (7) Power failure or breakdown in machinery:

**11. ERECTING**

If erecting is included in the contract or special erecting Schedule becomes an integral part of the contract. The Buyer must provide the necessary crane, scaffolding (erected) and any other plant and equipment required for erecting at the time required by the Seller unless otherwise instructed.

**12. INSOLVENCY OF BUYER**

(a) This clause applied:-

- (1) The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) become bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction): or
  - (2) any encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer: or
  - (3) the Buyer ceases or threatens to cease, to carry on business: or
  - (4) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer, and notified the Buyer accordingly.
- (b) If this clause applies then without prejudice to any other rights or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, or if the goods have been delivered but not paid for the price shall immediately become due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall have the option of entering upon the premises of the Buyer or any third party where the goods are stored and repossess the goods.

**13. GENERAL**

- (a) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the goods and to the country of destination and for the payment of any duties thereon.
- (b) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these conditions and the remainder of the provision in question shall not be affected thereby.
- (c) No waiver by the Seller of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (d) Any dispute arising under or in connection with these conditions or the sale of the Goods shall be referred to arbitration by a single arbitration appointed by agreement or (in default) nominated on the application of either party by the President for the time being chartered Institute of Arbitrations.
- (e) None of the within terms or conditions shall be deemed to effect or reduce the Buyers rights under common law or the appropriate consumer legislation.