

**1. Acceptance and Cancellation**

- (1) No order for Seller's goods (whether pursuant to a quotation by Seller or otherwise) is binding on Seller until accepted in writing by Seller.
- (2) Each order is subject to these Conditions of Sale (insofar as not consistent with any special terms agreed in writing by Buyer and Seller) to which Buyer shall be deemed to assent.
- (3) No order shall be subject to other conditions or to modifications of these Conditions unless Seller agrees thereto in writing and Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from Buyer.
- (4) No representative, agent or salesman not a director of Seller has any authority to amend or waive any of these Conditions.

**2. Seller's Specifications**

All descriptions, formulae, specifications, drawings, weights, dimensions, capacities, prices, performance ratings and other data submitted by Seller or included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists are to be deemed approximate only except where expressly stated in writing to be exact and none of such items or any part thereof shall form part of contract. In view of condition 9 below (testing) test procedures shall be agreed with Seller at time of contract.

Seller reserves the right (except where goods to be in accordance with Buyer's formula or specification) to modify its formulae or specifications without notice to Buyer.

**3. Prices**

- (1) Until an order has become binding on Seller all prices are subject to change without prior notice.
- (2) After an order has become binding on Seller all prices are subject to increase to reflect increases from time to time in list prices and any increases in costs (including without limitation costs of materials, labour, transport, services, and any tax, fee or charge imposed by any government or other authority) prior to delivery and any such increase shall apply to all goods despatched 7 days or more after date Seller's notice to Buyer of such increase is received, provided that Buyer shall be entitled by written notice given within 5 days of receiving Seller's notice of increase to cancel delivery of goods not despatched by Seller at close of business on date of receipt by Seller of Buyer's notice of cancellation.
- (3) Unless otherwise agreed in writing or stated in acknowledgement of order price does not include any export or import duty or any other tax (including U.K. value added tax) and same shall be for Buyer's account.

**4. Representations**

Each of Seller and Buyer shall be regarded as having received no representation made by or on behalf of other of them before contract was entered into which in any way induced it to enter into contract, but this shall not apply to any representation made to one party by or on behalf of other which was reduced to writing and signed by or on behalf of representor and was in possession of representee prior to making of contract, and in particular, without prejudice to generality of foregoing, those recorded in order of acknowledgement of it.

**5. Payment**

- (1) Unless otherwise agreed by Seller or stated in acknowledgement of order net invoice amount shall become due for payment by Buyer on twentieth day of month next following month of Seller's invoice.
- (2) Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment under contract or partial payment of any moneys due and payable under any other contract between Seller and Buyer.
- (3) If Buyer defaults in payment Seller may, in addition to exercising right contained in Condition 5(2), suspend work under contract, delay delivery, cancel contract, suspend work under, delay delivery under and cancel other contracts with Buyer and retain any progress payments or payments on account already received under contract or other contracts with Buyer.
- (4) Seller reserves the right to charge interest on all moneys not received on due date from due date till date of actual payment at a rate not exceeding 14 per cent over rate payable by Seller to its bankers during such period.

**6. Property and Risk**

- (1) Property in goods and all risks in connection with goods shall pass to Buyer as follows:-
  - (i) where goods delivered by road or rail in drums or other containers immediately drums or other containers have been removed from vehicle transporting them;
  - (ii) where goods delivered by road tanker immediately goods have passed from road tanker's final flange;
  - (iii) where goods delivered by rail tanker immediately rail tanker containing goods enters on premises of Buyer;
  - (iv) where goods shipped f.o.b. to U.K. port immediately drums or containers containing goods have been delivered over ship's rail at port of shipment;
  - (v) where goods collected by Buyer or by anyone acting on Buyer's behalf and delivery is made in drums or other containers immediately drums or other containers have been placed on vehicle collecting them;
  - (vi) where goods collected by Buyer or by anyone acting on Buyer's behalf and delivery is made from storage tanks immediately goods have passed from final flange of storage tanks discharging line;
  - (vii) where goods shipped c.i.f. immediately goods have passed ship's rail at port of destination.
- (2) Seller shall be under no obligation to give to Buyer notice specified in Section 32(3) of Sale of Goods Act, 1979.

**7. Delivery**

- (1) Time is not of essence of contract and any time time or date specified by Seller as time at which or date on which goods will be delivered is given and intended as estimate only and Seller shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.
- (2) Buyer shall at request of Seller supply Seller with details necessary to allow Seller to make delivery and shall accept delivery whenever Seller proffers delivery. If Buyer does not comply with foregoing it shall not be entitled to withhold any payment related to delivery and shall indemnify Seller against any consequent loss, damage or expense and Seller may cancel intended delivery and sell goods to which such intended delivery related without prejudice to its right to claim damages in respect of such breach of contract or may store goods in a place of its choosing at cost of Buyer.
- (3) Seller reserves right to make delivery by instalments unless otherwise expressly stipulated in contract. Period during which delivery by instalment may be made and quantity of goods delivered in each instalment shall be in Seller's discretion. Condition 7(4) below shall apply (mutatis mutandis) to each instalment delivery.
- (4) Delivery of more or less than quantity or weight of goods contracted to be sold or inclusion therewith of goods of a different description not included in contract shall not entitle Buyer to reject whole of goods delivered, and where Seller supplies Ten per cent more or less than quantity or weight ordered Seller may charge pro rata quantity or weight supplied and Buyer shall treat such delivery as full performance by Seller of its contractual duty to delivery.
- (5) Notwithstanding any express agreement as to date of delivery Seller shall be entitled to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making or obtaining goods or materials required in connection with production of goods or making delivery by fire, explosion, flood, strikes, lockouts, trade disputes or labour troubles or any cause beyond Seller's control and Seller shall not be bound to obtain in market goods with which to replace goods delivery of which has been postponed or cancelled as a result of any of said events. In event of cancellation Buyer shall pay pro rata for goods delivered or work done to date of cancellation.
- (6) Buyer shall be solely responsible for proper unloading or discharging of goods. If to assist Buyer remove goods from point of delivery Seller or any sub-contractor does any loading or unloading of goods free of charge no liability whatsoever shall thereby be incurred by Seller or sub-contractor and Buyer shall indemnify them in respect thereof.
- (7) Seller's certificate at works to be accepted as absolute proof of weight of goods delivered. Buyer's representative to have right to check weight at Seller's weighbridge.

**8. Buyer's Obligations and Claims on Delivery**

- (1) Buyer will:-
  - (i) examine goods carefully within 7 days of taking delivery;
  - (ii) notify Seller in writing not later than 60 days of taking delivery whether or not it intends to test goods;
  - (iii) notify Seller and carrier in writing within 7 days of taking delivery of any error in quantity or weight or description of goods delivered or that they were mixed with others not included in contract or of any damage to goods revealed by such examination and not caused since delivery was taken;
  - (iv) notify Seller in writing within 7 days of date of Seller's invoice if goods subject of invoice have not been received.
- (2) Failure to make any notification in accordance with paragraph (iii) above which examination under (i) above should have enabled Buyer to make shall constitute waiver by Buyer of all claims based on or relating to facts which such examination have revealed.

**9. Testing**

- (1) Results of tests which have not been agreed and carried out in accordance with procedures agreed with Seller shall not be regarded for purpose of any claim against or in establishing any liability of Seller.
- (2) If Buyer wishes to make any claim against Seller on basis of tests so agreed and carried out, Buyer shall send Seller not later than three months after date of delivery results of any such testing of goods together with details of claim. Failure to comply with this condition or Condition 8(1)(ii) above shall constitute waiver by Buyer of all claims based on or relating to facts revealed by such or any other testing.

**10. Warranty of Seller**

- (1) Seller warrants that it has right to sell goods and that goods are free from any charge or encumbrance unknown to Buyer.
- (2) Seller undertakes to refund price of or at its discretion replace any goods which are shown by Buyer to Seller's satisfaction not to be fit for any purpose disclosed to Seller in writing at time of order or not to be in accordance with any agreed sample, formula or specification relating to their production provided:-
  - (i) Buyer requires Seller not later than three months after date of delivery of goods and promptly after deciding that goods not as aforesaid to make such replacement;
  - (ii) Seller shall be entitled to make such test or inspection as it thinks fit before consenting to goods being returned and accordingly Buyer shall preserve intact goods which it claims to return for a period of 30 days after such claim is made and afford Seller any facilities requested to inspect and test such goods;
  - (iii) Buyer returns goods carriage paid in accordance with Seller's instructions;
  - (iv) Seller is satisfied that goods have been used, handled, applied stored in accordance with any written advice or instruction provided by Seller and in a proper and workmanlike manner and not used or applied after any such claim by Buyer has been made.

- (3) Failure to make such claim shall constitute unqualified acceptance of goods and waiver by Buyer of all claims relating to their quality, fitness or that they are not in accordance with any sample or agreed formula or specification.
- (4) Undertaking in Condition 10(2) above shall not apply where Seller is satisfied that a person other than Seller has so dealt with the goods as to contribute to need for replacement.
- (5) Where price is refunded or goods are replaced by Seller Buyer shall not be entitled to make any claim in respect of goods for work done thereon, transport costs, loss of profit on resale or in respect of any claim, loss, damage or expense whatsoever nor shall Buyer be entitled to treat delivery of such defective goods as ground for repudiating contract or for cancelling further deliveries or for failing to pay for goods delivered nor shall Buyer have any claim in respect of death or personal injury (save for death or personal injury caused by negligence of Seller) or damage to property not subject matter of contract.
- (6) Production of goods by Seller in accordance with any formula or specification or other direction of Buyer or to satisfy patent or other requirements of Buyer shall not constitute negligence by Buyer as against Buyer, and Buyer shall have no claim against Seller on any ground whatsoever in relation to quality, characteristics or fitness for any purpose of any such goods and will indemnify Seller against all claims relating to such goods in respect of any loss, damage or expense sustained by any third party attributable to such quality or characteristics.
- (7) Subject to 10(1) and (2) above no statement undertaking warranty or condition express or implied statutory customary or forming part of any course of dealing between Seller and Buyer or otherwise not stated in these Conditions shall apply to contract.

**11. Indemnity to Buyer**

Save for damages for death or personal injury caused by negligence of Seller Buyer undertakes to indemnify Seller against all claims relating to goods sold to Buyer by Seller in respect of any loss, damage, or expense sustained by any third party howsoever caused.

**12. Damages**

Save for damages for death or personal injury caused by negligence of Seller Buyer shall not be entitled to recover from Seller damages for breach of contract of which these Conditions form part exceeding higher of price of goods paid by Buyer under such contract and any amount agreed in writing for purpose of this condition.

**13. Lien**

Seller shall have a lien on all goods which Buyer agrees to buy from Seller for all moneys due from Buyer to Seller under contract and Buyer shall have no right of set-off in respect of such moneys.

**14. Patents, etc.**

- (1) Buyer warrants that any special requirements or instructions by it in relation to goods do not and shall not infringe patent rights, registered designs, copyright or other industrial property rights of others and Buyer shall indemnify Seller against all actions, costs (including costs of defending any legal proceedings) claims, proceedings, damages, accounts and demands in respect of any infringement or alleged infringement by Seller of patent rights, registered design, copyright or other industrial property rights of others arising from or as a result of Seller's compliance with Buyer's special requirements or instructions.
- (2) Where goods not produced in accordance with any requirements of Buyer Seller shall have no liability to Buyer if use or sale of goods by Buyer infringes any industrial property rights of any third party unless Seller has knowledge of such rights at date of agreement to sell to Buyer and Buyer will indemnify Seller from and against all liability arising from Buyer's use or sale of goods provided Seller had no such knowledge at date of agreement to sell to Buyer.

**15. Default of Buyer**

If Buyer defaults in or commits any breach of any of its obligations to Seller or ceases to carry on its business or a substantial part thereof, or if any distress or execution is levied on any of Buyer's property, or if Buyer makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any resolution or petition to wind-up Buyer's business is presented or passed, or a Receiver appointed of Buyer's undertaking, property or assets or any material part thereof, then Seller shall be entitled forthwith to terminate this and any contract with Buyer then subsisting and on written notice of such termination being posted by it to Buyer's last known address this and if notice so states every other subsisting contract between Seller and Buyer shall be terminated, without prejudice to any claim or right which Seller might otherwise make exercise or have against Buyer.

**16. Notices**

Any notice given hereunder must be in writing and may be effected by personal delivery, telex or by registered mail postage and if effected by telex shall be deemed to be received on day of sending and if effected by post shall be deemed to be received 48 hours after date of posting.

**17. No Assignment**

Contract shall be personal to Buyer and shall not be assigned by Buyer without written consent of Seller.

**18. Governing Law**

These Conditions and contract of which they form part shall be governed and construed in accordance with English Law and Seller and Buyer agree to submit to jurisdiction of English Courts.