

## terms and conditions for account holders ...

### 1. Introduction

We provide various goods for purchase from our company. These terms and conditions govern your purchase of goods if you are a business with an account with us. Your attention is drawn to the following clauses in particular which exclude or limit our liability:- 6(b), 6(e), 12(c), 13(b), 13(c), 13(e), 13(f), 13(g), 13(h).

### 2. Businesses

These terms and conditions apply to commercial enterprises only.

### 3. Definitions

The following terms have the following meanings in these Terms and Conditions;

- (a) "Buyer" the person(s), firm or company (as designated on your account application form and/or headed notepaper) who purchases the Goods. "You and "your" refers to the Buyer
- (b) "Conditions" - the standard terms and conditions of sale set out in this document.
- (c) "Contract" any contract between the Seller and the Buyer for the sale and purchase of the Goods incorporating these Conditions
- (d) "Goods" - the goods (including any installment of the goods or any part thereof) supplied by the Seller under these Conditions.
- (e) "Seller" - "Us", "we" and "our" refer to the Seller
- (f) "Writing" - includes telex cable facsimile transmission and comparable means of communication but excludes any electronic form of communication.

In these Conditions, references to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as modified, consolidated or re-enacted for the time being in force or to any statute or provision of which the statute or provision is a consolidation or modification and such reference shall include all statutory instruments or orders made pursuant to that statute or provision. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 4. Basis of the Sale

- (a) The Seller shall sell and the Buyer shall buy in accordance with these Conditions excluding all other terms and conditions save those implied automatically by statute.
- (b) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing so that in entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed. Nothing in this clause will exclude or limit the Seller's ability for fraudulent misrepresentation.

Any advice given or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

### 5. Orders

The Buyer Can:-

place an order for Goods and pay at a later date upon receipt of an invoice from the Seller; or place an order for Goods and pay for the Goods at the same time as the order is submitted

If the Buyer is simply placing an order in accordance with condition 5 (a) (i) above, the Buyer must first have the Seller's permission

- (b) Each order for Goods placed by the Buyer from the Seller through this website shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. No order placed by the Buyer shall be deemed to be accepted by the Seller until the Seller delivers the Goods to the Buyer.
- (c) The Buyer shall be responsible for ensuring the accuracy of the quantity and description of the Goods as specified in the order.
- (d) All descriptions and illustrations and advertisements in our catalogue are intended merely to present a general idea of the Goods described therein and nothing contained in any of them shall form any part of the Contract.

### 6. Delivery

- (a) Unless otherwise agreed prior to placing the order in writing by the Seller, delivery of the Goods shall take place at the Buyer's place of business or at the address submitted by the Buyer at the time the order is submitted.
- (b) The Seller will endeavour to deliver the Goods within a reasonable time, but will not be liable for any loss or damage caused by delay in the delivery of the Goods, nor will any such delay entitle the Buyer to cancel or rescind this Contract.
- (c) Where the seller has agreed in advance to deliver the Goods by installments and where the Goods are delivered by installments, each delivery shall constitute a separate contract and failure by the Seller to deliver on time shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- (d) Should the Seller be prevented or hindered in delivering the Goods by any reason of war riot explosion fire flood strike lock-out shortage of materials or labour or any cause beyond the Seller's control the time for delivery shall be extended by a period equal to that during which the cause preventing or hindering delivery exists SAVE THAT the Buyer shall take and pay for any part of the Goods as the Seller shall be able to deliver in accordance with these Conditions.
- (e) If the Seller fails to deliver the Goods for any reason other than in accordance with (d) above or as a result of the Buyer's fault, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- (f) No claim for damage to the Goods or shortages will be considered unless the Seller is notified immediately by telephone and subsequently in writing at their Head Office within three days of delivery, otherwise any claim by the Buyer will be deemed to have been waived.
- (g) All goods received and signed for on the delivery note are deemed to have been examined, checked and acknowledged as being correct in every detail. You are considered to have given authority to accept a delivery on your behalf to any person who actually accepts delivery at the delivery address
- (h) The Seller reserves the right to charge additional carriage on specified deliveries where they may fall outside the normal delivery area or fall below a previously agreed value level.
- (i) You are obliged to provide adequate labour and facilities at the delivery address to unload or load the Goods without undue delay. We will require compensation for any loss we suffer arising from delivery or collection or non-delivery or non-collection of the Goods if it is subsequently proven that the said loss is not a result of our action.

## 7. Insurance

All goods left on hire, or approval with the customer/prospective customer will automatically be deemed to be covered by the Buyer's insurance policy and at the Buyer's risk or at risk of the intended customer as soon as they are delivered by the Seller.

## 8. Retention of Title

Where payment for the Goods is not made in full at the time the order is submitted by the Buyer:-

- (a) Notwithstanding delivery of the Goods and passing of risk, title to the Goods will not pass to the Buyer until payment of the full price for the Goods/Services and all other sums due under any contract whatsoever have been paid in full. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and any other contract between the seller and the buyer.
- (b) If the Goods are sold to a third party before payment has been made to the Seller the proceeds shall be held by the Buyer on trust for the Seller pending payment.
- (c) The Goods must be fully insured stored separately and clearly identified as the Seller's property until payment
- (d) The Seller may at any time after the price for the Goods or any other sum has become due from the Buyer under this Contract rescind this Contract and recover the Goods. The Buyer hereby gives its authority for the Seller to enter onto the Buyer's premises for that purpose.

## 9. Risk and Property

(a) The risk of damage to or loss of the Goods will pass to the Buyer:-

- (i) in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer in writing that the Goods are available for collection (please note that this is only possible if agreed in advance (prior to submitting the order) by the seller); or
- (ii) in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

## 10. Price

Subject to clause 11(d) below, the price of the Goods will be the cheaper of the prices shown i) in the catalogue less the buyer's discount (if applicable) or ii) on the Buyer's valid special prices list. All prices are shown exclusive of any applicable VAT which the Buyer shall be additionally liable to pay to the Seller.

(b) The Seller reserves the right to increase the price of the Goods at any time before delivery to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller or any change in the delivery dates quantities or specifications 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.

(c) The Buyer may be required to pay extra for delivery of the Goods. Our delivery charges are set on our website and will be advised prior to submitting your order.

## 11. Payment

The Buyer can pay for the Goods either:-

(a) By paying by cash or cheque or BACS at the time an order is submitted by the Buyer; or if agreed in advance with the Seller, upon receipt of an invoice from the Seller. If the Buyer chooses to pay upon receipt of an invoice from the Seller:-

The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods to the Buyer.

The time for payment will be agreed in advance with the Seller

The time for payment shall be of the essence

(c) If the Buyer chooses to pay upon receipt of an invoice from the Seller and the Buyer fails to make any payment on the agreed date for payment then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

- (i) cancel the Contract or suspend any further deliveries to the Buyer;
- (ii) immediate payment of all payments outstanding in respect of Goods supplied under the Contract and all other Goods under any other contract;
- (iii) appropriate any payment made by the Buyer for such of the Goods as the Seller may think fit;
- (iv) charge the Buyer interest on the amount unpaid at the rate of 8 per cent per annum above the base rate of the Bank of England, compounded daily, on the amount outstanding until it has been made in full;
- (v) receive from the Buyer a sum equivalent to any bank charges, legal costs or other costs charges or expenses incurred by the Seller arising from late payment or recovery of sums due;
- (d) In addition to any right of lien entitled at law, the Seller shall be entitled to a general lien on all property of the Buyer in the possession of the Seller for all sums whether or not liquidated or qualified due from the Buyer to the Seller PROVIDED THAT the Seller shall not be liable for loss of or damage to the Buyer's property in the Seller's possession either as a result of the exercise by the Seller of its lien or otherwise
- (e) Receipts for payment shall only be issued upon request

## 12. Cancellation

(a) If the Buyer cancels or delays the Contract or any part thereof or fails to take delivery of the Goods at the time agreed (if any) or if no time agreed, within a reasonable time, then the Buyer will be liable in addition to any other right of the Seller to indemnify the Seller against any resulting loss damage or expense incurred in connection with the supply or non-supply of the goods or the performance or non-performance of the Contract, including costs of any material, plant or tools used or intended to be used thereof and the cost of labour and other overheads including a percentage in respect of profit.

(b) The Seller reserves the right to cancel the Contract if:-

the Seller has insufficient stock to deliver the Goods the Buyer has ordered; or

the Seller does not deliver to your area; or

one or more of the Goods ordered was listed at an incorrect price due to a typographical error or any other error.

(c) If the Seller does cancel your contract the Seller will notify you by email and will re-credit any monies deducted by the Seller from your credit card as soon as possible but in any event within 30 days of your order. The Seller will not be liable to pay any additional compensation for any loss suffered by you as a result of such cancellation,

### 13. Warranties and Indemnities

(a) The Seller warrants to the Buyer that the Goods:

(i) will be of satisfactory quality and fit for its purpose within the meaning of the Sale of Goods Act 1994;

(ii) will be free from defects in design material and workmanship for a period of 12 months from the date of delivery;

(iii) will comply with all statutory requirements and regulations relating to the sale of the Goods their construction method of operation and safety

(iv) will be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller

(b) The Seller shall not be liable to the Buyer for a breach of any of the warranties in Condition

13(a) unless

(i) the Buyer gives written notice of the defect to the Seller within 40 days of the delivery date or the time stipulated by the manufacturer, whichever is longer

(ii) the Buyer returns the Goods in good order and condition with carriage paid.

(c) The Seller shall not be liable for a breach of any of the Warranties in Condition 13(a) for

(i) loss or consequential damage arising from the failure or defect of goods supplied

(ii) any defect, unsuitability or safety or otherwise of the Goods supplied for the intended purpose of the Goods where the Goods are manufactured, altered or modified in accordance with the Buyer's instructions or according to drawings or design or specification supplied by or on behalf of the Buyer

(iii) any defect arising from fair wear and tear willful 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

(iv) any claim under the warranty described below (or any other warranty or guarantee) if the total price for the Goods has not been paid by the due date for payment.

(d) Subject to the conditions set out above, if the Goods do not conform to Condition 13(a) the Seller shall replace, repair free of charge or issue a credit note against such Goods acknowledged to be faulty provided that such faults have not been caused by the Buyer's misuse of the Goods or the Buyer's negligent handling of them.

(e) Subject as expressly provided in the Conditions all warranties conditions terms and liabilities express or implied by statute or common law are excluded to the fullest extent permitted by law

(f) Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with any Order shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure PROVIDED THAT if delivery is not refused and the Buyer does not so notify the Seller the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and (where the Goods have not been paid for in full) the Buyer shall be bound to pay the price for the Goods as if they had been delivered in accordance with the Contract.

(g) Where any claim by the Buyer in respect of any of the Goods which is based on any alleged defect in the quality or condition of the Goods or their failure to meet any specification or Order is notified to the Seller in accordance with these Conditions the Seller shall be entitled to either:

(i) the return of the Goods to the Seller's premises (if practical) for inspection by it or its representative; or

(ii) the opportunity for it or its representatives to inspect the Goods at the Buyer's premises

For the purpose of validating the claim SO THAT if the claim is validated the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund 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

(h) Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Seller its 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 and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in the Conditions.

(i) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control PROVIDED THAT without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:-

(i) Act of God explosion flood tempest fire or accident;

(ii) war or threat of war sabotage insurrection civil disturbance or requisition;

(iii) act restriction regulations bye-laws prohibitions or measures of any kind on the part of the governmental parliamentary or local authority;

(iv) import or export regulations or embargoes;

(v) strikes lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or a third party);

(vi) difficulties in obtaining raw materials, labour, fuel parts or machinery;

(vii) power failure or breakdown in machinery

(j) Subject to the foregoing provisions of this clause the Seller's liability (if any) whether in contract tort or otherwise for any breach of the Contract or any duty owed to the Buyer in connection herewith shall be limited to the sum of £100,000.00 PROVIDED THAT in assessing the Seller's liability to compensate the Buyer (if any) regard shall be had to the price and nature of the Goods in question and the nature and price of the end product in which such Goods are incorporated.

### 14. Termination

In the event that the Buyer does not pay for the Goods in full at the time the order is placed the Seller reserves the right to terminate this Contract immediately upon service of written notice sent by first class post which shall be deemed to have been received on the day following posting and such termination shall be without prejudice to all rights obligations and liabilities accrued prior to termination (and if the Goods have been delivered but not paid for the price for the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary) on any one or more of the following grounds:-

(i) The Buyer has an order of bankruptcy made against him, or entered into any arrangement or composition with creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or

informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or (ii) the Buyer suffers or allows execution (whether legal or equitable) to be levied on his property or obtained against him, or.

The Buyer has not observed or performed any of the obligations and duties imposed on him under this Contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

The Buyer encumbers or in any way charges any of the Goods and if the Goods have been delivered but not paid for the price for the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### 15. Goods for Return

No Goods can be accepted for return without prior agreement. The buyer shall contact the Seller to arrange for delivery of returned Goods. No Goods will be accepted for return after 7 days from the date of delivery. Any Goods returned must be in original unmarked condition and packaging. Packaging that has been defaced, written on, damaged or marked in any way cannot be accepted for return. No credits can be issued unless these conditions are met.

#### 16. Trades Description Acts

Products offered for sale may differ from those described or illustrated in this website due to later production changes in specifications, components or place of manufacture. The contents of the seller's catalogue's website and other promotional materials are therefore not to be treated as representative as to the current availability of products as described, or as products actually for sale.

#### 17. General

##### (a) Notices

Unless otherwise expressly stated in these terms and conditions, all notices from you to us must be in writing and sent to our contact address which can be found on our website and all notices from us to you will be displayed on our website from time to time.

##### (b) Invalidity

If any part of these terms and conditions is unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part of these conditions will not be affected.

##### (c) Third Party Rights

A person who is not a party to this Contract has no rights under the UK Contracts (Rights of Third Parties) at 1999 to enforce any term of this Contract this does not affect any right or remedy of a third party that exists or is available apart from that.

##### (d) Governing Law

The contract between us shall be governed by and interpreted in accordance with English Law and the English Court shall have jurisdiction to resolve any disputes between us.

##### (e) Entire Agreement

These terms and conditions together with any terms agreed in advance in writing by the Seller, delivery details and contact details set out the whole of our agreement relating to the supply of the Goods to you by us.

##### (f) Waiver

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

##### (g) Assignment

The Buyer shall not assign any benefit under these Conditions without the Seller's written consent.