

# TERMS AND CONDITIONS OF SALE

## 1. GENERAL

- 1.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the Seller and the Buyer. Without prejudice to the generality of the foregoing, the Seller will not be bound by any standard or printed terms furnished by the Buyer in any of its documents, unless the Buyer specifically states in writing separately from such terms that it intends such terms to apply and the Seller acknowledges such notification in writing.
- 1.2 These terms and conditions shall not be affected by any previous dealings between the Seller and the Buyer. Each particular contract shall be regarded as a separate and new contract having no relation to other contracts between the Buyer and the Seller.
- 1.3 These terms and conditions apply to all goods sold from time to time by the Seller to the Buyer ("the goods").

## 2. VARIATION

- 2.1 Neither the Buyer nor the Seller shall be bound by any variation, waiver of, or addition to these terms and conditions except as agreed by both parties in writing and signed on their behalf.
- 2.2 These terms and conditions cannot be varied by any person acting or purporting to act as employee or agent of the Seller. They can be varied only by a director of the Seller in writing.

## 3. DESCRIPTION

- 3.1 The description of the Goods has been given by way of identification only and the use of such description shall not constitute a sale by description.

## 4. SAMPLE

- 4.1 Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby declared that such sample was so exhibited and inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

## 5. EXCLUSIONS

- 5.1 No liability whatsoever shall be incurred by the Seller in respect of any representation made by the Seller or its agents to the Buyer or the Buyer's agents before the contract was made where such representation related or referred in any way to (i) the correspondence of the Goods to any description or (ii) the quality of the Goods or (iii) the fitness of the Goods for any purpose.
- 5.2 No liability whatsoever (other than as expressly set out in these terms and conditions) shall be incurred by the Seller to the Buyer in respect of any express term of the contract whether a condition, warranty or intermediate stipulation (including any liability arising from the breach of such term) where the said term relates or refers in any way to (i) the correspondence of the Goods to any description or (ii) the quality of the Goods or (iii) the fitness of the Goods for any purpose.
- 5.3 All implied terms conditions or warranties whether statutory or otherwise as to (i) the correspondence of the Goods to any description or (ii) the merchantable quality of the Goods or (iii) the fitness of the Goods for any purpose (whether made known to the Seller or not) are hereby excluded from the contract (other than as may be expressly set out in these terms and conditions).
- 5.4 The Seller does not seek to exclude liability for death or personal injury caused by the Seller's negligence.

## 6. PRICE

- 6.1 All quotations and estimates issued by the Seller are, unless otherwise stated, based on the current cost of production (which include but are not limited to materials, hours and wages) and are subject to amendment on or after acceptance to meet any rise or fall in such cost.
- 6.2 Any variation to prices quoted as a result of government taxes or levies will be for the Buyer's account.
- 6.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

## 7. PAYMENT

- 7.1 Payment for Goods supplied under the contract is due 28 days from the date of invoice (unless otherwise agreed in writing by a director of the Seller).
- 7.2 The Buyer agrees that the Buyer will not be entitled for any reason to make any deduction from or withhold payment due to the Seller.
- 7.3 Time for payment of all sums payable to the Seller shall be of the essence of the contract.
- 7.4 If payment of the price is not made in full by the due date for payment whether the same be demanded or not the Seller shall be entitled (without prejudice to any other rights it may have):
  - 7.4.1 to charge interest on the outstanding amount at the rate of 3% per annum above the Base Rate of Lloyds Bank plc from time to time in force and accruing daily; and
  - 7.4.2 to require payment in advance of delivery of undelivered Goods; and
  - 7.4.3 to refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non delivery or any delay in delivery; and
  - 7.4.4 to terminate the contract.
- 7.5 If the Goods comprise of sectional tanks or modular buildings (or any other products which require installation by the Seller) the Seller shall be entitled (but not bound) to render two invoices. The Seller shall be entitled to render the first such invoice as soon as the Goods have been manufactured and ready for delivery, such invoice to be in respect of the value of the Goods. The Seller shall be entitled to render the second such invoice after installation of the Goods has been completed, such invoice to be only in the amount of the installation element included in the price. Both invoices are payable within 28 days of the invoice date (unless otherwise agreed in writing by a director of the Seller).

## 8. DELIVERY

- 8.1 The Goods are delivered to the Buyer when the Seller makes the Goods available to the Buyer or any agent of the Buyer or any carrier (who will be the Buyer's agent whoever pays his charges) at the Seller's premises (or other delivery point if agreed by the Seller in writing).

- 8.2 The Seller has the right to deliver the Goods by instalments in any sequence.

- 8.3 If the Goods are delivered by instalments:

- 8.3.1 each instalment will be deemed to be the subject of a separate contract; and
- 8.3.2 any default or failure by the Seller in respect of one or more instalments will not vitiate the contract in respect of the Goods previously delivered or undelivered Goods.
- 8.4 The Seller may deliver to the Buyer and the Buyer must accept in satisfaction of the contract a lesser sum than the number of the Goods ordered. The Seller will give credit for any undelivered Goods.
- 8.5 Any dates stated by the Seller for the delivery of the Goods are approximate only and do not form part of the contract and the Buyer agrees that the Buyer will have no regard to quoted delivery dates. Time of delivery shall not be of the essence of the contract, the Goods may be delivered by the Seller in advance of any quoted delivery date upon giving reasonable notice to the Buyer.
- 8.6 If the Buyer fails to take delivery of the Goods (or any part of them) the Seller will be entitled upon giving written notice to the Buyer to store (or arrange for storage of) Goods and upon such written notice to render an invoice in respect of the said Goods (such invoice to be payable within 28 days of the date of invoice). Risk in the Goods will pass to the Buyer at the time of issue of such invoice and the Buyer will pay to the Seller on demand all costs and expenses (including but not limited to storage and insurance charges) arising from the failure to take delivery.
- 8.7 The Seller will not be liable for any personal loss injury damage or expense arising from any delay or failure in delivery performance from any cause at all nor will any such delay or failure entitle the Buyer to refuse to accept any delivery or performance of or to repudiate the contract.

## 9. RISK

- 9.1 Risk in the Goods will pass to the Buyer when they are delivered to the Buyer whether by being made available at the Seller's premises or other delivery point agreed by the Seller.

## 10. PROPERTY

- 10.1 The property in the Goods will not pass to the Buyer until payment of the price for the Goods has been made in full. Until such time:
  - 10.1.1 the Buyer will hold the Goods as the Seller's bailee and fiduciary agent; and
  - 10.1.2 the Buyer will store the Goods separately from other goods so that they can be identified as the Seller's property and will keep the same protected and insured.
- 10.2 Until such time as property in the Goods passes to the Buyer 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 believed to be stored and repossess the Goods.

## 11. DEFECTS IN GOODS/NON DELIVERY - CLAIMS

- 11.1 Any claim for non-delivery of any Goods must be notified in writing by the Buyer to the Seller within seven days from the date on which the Buyer receives an invoice for those Goods.
- 11.2 Any claim that the Goods have been delivered in a damaged state or are not of the current quantity or do not comply with their description must be notified in writing to the Seller within seven days of delivery.
- 11.3 Any alleged defects in the Goods must be notified by the Buyer to the Seller within seven days of the delivery of the Goods.
- 11.4 The Buyer shall in each notification as is referred to in sub-clauses 11.1 to 11.3 above give full details of the claim.
- 11.5 The Buyer must afford the Seller reasonable opportunity and facilities to investigate any claims made by the Buyer and if requested in writing by the Seller must promptly return any Goods which are the subject of a claim (together with any packing) securely packed and carriage paid to the Seller for examination.
- 11.6 The Seller will have no liability whatsoever in respect of claims made otherwise than in accordance with the provisions of sub-clauses 11.1 to 11.5 above.

## 12. DEFECTS IN GOODS/NON DELIVERY - REMEDIES

- 12.1 Subject to sub-clause 12.3 and provided that Clause 11 has been complied with, if the Buyer proves that any Goods have not been delivered or have been delivered damaged or are not of the correct quality or do not comply with their description the Seller will at its option replace the same with similar Goods or allow the Buyer credit for their invoice value or repair damaged Goods.
- 12.2 Subject to sub-clause 12.3, and provided that Clause 11 has been complied with, if the Buyer proves that any Goods are defective the Seller shall at its option replace the same with other Goods or repair the Goods or allow the Buyer credit for their invoice value or to the extent that any Goods are not of the Seller's manufacture assign to the Buyer (so far as the Seller is able to do so and at the cost of the Buyer) all such rights against the manufacturer in respect of the Goods as the Seller may have.
- 12.3 Under no circumstances will the Seller be liable for:
  - 12.3.1 defects or damage resulting from fair wear and tear or improper use by the Buyer or failure by the Buyer to comply with the instructions or advice of the Seller whether in the ESSENTIAL INFORMATION (as referred to in Clause 15 below) or elsewhere or the manufacture of the Goods or neglect of any other description;
  - 12.3.2 Goods which have been adjusted, altered, adapted or required by any party other than the Seller;
  - 12.3.3 variations in the quantities or dimensions of any Goods or changes in specifications or substitution of any material or components if the variation does not materially affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified;
  - 12.3.4 any defect arising from any design or specification provided or made by the buyer or if any adjustments, alterations, adaptations or other work has been done to the Goods by any person other than the Seller.

## 13. TERMINATION

- 13.1 The Seller may (without prejudice to its other rights) in its absolute discretion suspend or terminate the supply of any Goods if the Buyer fails to make punctual payment of any sum due or becomes insolvent or if the Seller reasonably believes that any of the said events may occur.

## 14. INSTALLATION

- 14.1 Unless specified otherwise below, installation of the Goods (if required) is the responsibility of the Buyer.
- 14.2 Where it is specified below that the Seller will install the Goods, then:
  - 14.2.1 it is the responsibility of the Buyer to ensure that the site (or the appropriate part thereof) where the goods are to be installed ("the site") is correctly prepared and ready for the Goods; and
  - 14.2.2 the Buyer shall supply at the sole expense of the Buyer any lighting, fuel, water, scaffolding and ladders as necessary for the safe installation of the Goods; and
  - 14.2.3 the Buyer shall be responsible for the safe transfer of the Goods to the point of installation from the delivery point; and
  - 14.2.4 if the Buyer is in breach of any sub clauses 14.2.1, 14.2.2 or 14.2.3 then the Seller shall be entitled to leave the site and to invoice the Buyer in respect of the abortive visit; and
  - 14.2.5 the Buyer shall take all such steps as may be necessary to ensure the safety on any premises of the Buyer of the persons instructed by the Seller to install the Goods; and
  - 14.2.6 the Seller shall have no liability to the Buyer for any consequential loss incurred by the Buyer arising out of or in connection with the installation of the Goods and the maximum liability of the Seller arising out of or in connection with the installation of the Goods shall be limited to the installation cost included in the quoted price for the Goods.

## 15. ONE PIECE TANKS AND SECTIONAL TANKS

- 15.1 Where the Goods comprise a one-piece tank or sectional tank the Buyer acknowledges and agrees that the two sheets prepared by the Seller and entitled "ESSENTIAL INFORMATION - Important Notes for One Piece Tanks" and "ESSENTIAL INFORMATION - Important Notes for Sectional Tanks" are intended to have contractual effect and shall form part of these terms and conditions. The Buyer acknowledges having received prior to the contract being entered into a copy of whichever of those sheets is appropriate. In the event of any inconsistency between the provisions set out herein and the provisions set out in the said "ESSENTIAL INFORMATION" the provisions set out herein shall prevail.

## 16. BUYER'S SPECIFICATION

- 16.1 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

## 17. CHANGES IN SPECIFICATION

- 17.1 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 or performance.

## 18. CANCELLATION

- 18.1 No order which has been accepted by the Seller may be cancelled by the Buyer except 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.

## 19. SUB CONTRACTING

- 19.1 The Seller shall be entitled to sub-contract any work in respect of the Goods to such person as it thinks fit.

## 20. DRAWINGS, SPECIFICATIONS ETC.

- 20.1 Any drawings, specifications, plans or designs supplied by the Seller to the Buyer shall remain the property of the Seller and any information derived therefrom or otherwise communicated to the Buyer in connection with the contract shall be kept secret and shall not be published or disclosed to any third party. All drawings, specifications, plans or designs supplied by the Seller must be returned to the Seller on fulfillment of the contract unless otherwise agreed.

## 21. BUYER'S PREMISES

- 21.1 The Buyer acknowledges that it is the responsibility of the Buyer to ensure that part of the Buyer's premises intended to be the location for the Goods is suitable for the same, and in particular to ensure (if necessary by consulting professional engineers or other advisors as appropriate) that the intended location is able to support the Goods. The Buyer acknowledges that the Seller is only a manufacturer and (where appropriate) an installer of the Goods and that the Seller cannot and does not accept any liability of whatever nature caused or contributed to by the said location being unsuitable for the Goods.

## 22. FORCE MAJEURE

- 22.1 If delivery is delayed by strikes, lockouts, fire, accidents, defective materials, delay in receipt of raw materials or bought-in goods or components or any other cause beyond the reasonable control of the Seller a reasonable extension of time for delivery shall be granted and the Buyer shall pay such reasonable extra charge as shall have been occasioned by the delay.

## 23. LAW

- 23.1 These terms and conditions shall be governed by and construed according to English law and the parties to the contract hereby submit to the jurisdiction of the English courts.