

Terms and Conditions for the Sale of Goods

1 Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller;
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 'Goods' means the articles which the Buyer agrees to buy from the Seller;
- 1.4 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.5 'Seller' means Jones and Clark (Burton on Trent) Ltd

2 Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 Price and payment

- 3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above Lloyds TSB Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.4 The Seller may recover from the Buyer all bank, legal, agents, court or professional fees incurred in obtaining full payment for the Goods.

4 The Goods

- 4.1 The Goods shall be supplied in accordance with the description contained in the Buyer's order
- 4.1.1 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods
- 4.1.2 Any contractual description of the Goods by the Seller relates to the identity of the Goods but only if it relates to a central characteristic of the Goods or to a substantial ingredient in their identity.

5 Warranties and liability

- 5.1 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)) all warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 5.2 The Seller has no liability whatsoever arising out of the contract for the Goods, including claims for direct, consequential loss, expense or damage and whether arising under any warranty, statement, condition or express or implied term and whether caused by the Seller's negligence or of any of its agents or employees.
- 5.3 The Seller will not be liable in any circumstances for any amount in excess of the Price.

6 Cancellation of Orders

- 6.1 Once an order is accepted by the Seller, Goods can only be cancelled by agreement in writing of the Seller.
- 6.2 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 the cancellation.

7 Delivery of the Goods

- 7.1 Whilst the Seller will deliver the Goods ordered by the Buyer as soon as reasonably practicable, any date or time for delivery quoted by the Seller does not form part of those conditions and is not of the essence. The Seller is not liable to the Buyer for any damage, consequential loss, costs, expenses in respect of delay.
- 7.2 A delivery of an instalment constitutes a separate contract and delay or failure to deliver an instalment does not repudiate the whole contract.

8 Acceptance of the Goods

- 8.1 The Buyer shall be deemed to have accepted the Goods 24 hours after delivery to the Buyer.
- 8.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
- 8.3 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

9 Damage, Loss or Defect

- 9.1 The Buyer must notify to the Seller any loss or damage to the Goods within 3 days of receipt and the Goods shall be held for inspection to enable a claim to be made on the carrier. The Buyer shall immediately notify the Seller if the Goods are not received within 10 days of the date of the invoice.
- 9.2 Claims for defective Goods must be made to the Seller within 3 days of the defect becoming apparent. The Seller may request that the Goods are available for inspection at the Buyer's premises or may request return of the Goods.
- 9.3 If the Seller agrees the defect, the Goods will be replaced or a refund made for the Price.

10 Return of Goods

- 10.1 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller in accordance with the Seller's returns authorisation procedure and on terms to be determined at the absolute discretion of the Seller
- 10.2 If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of 10% of the invoice price. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original shipping carton
- 10.3 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

11 Title and risk

- 11.1 The Goods shall be at the Buyer's risk as from delivery.
- 11.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
- 11.2.1 the Buyer shall have paid the Price plus VAT in full; and
- 11.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 11.3 Until property in the Goods passes to the Buyer in accordance with clause 11.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 11.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings.
- 11.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 11.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 11.4 shall cease.
- 11.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 11.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

12 Set off and Counterclaim

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatever.

13 Proper law of contract

This contract is subject to the law of England.

All orders placed on Jones and Clark (Burton-on Trent) Limited will after the 1 April 2009 be accepted and processed only upon these Terms and Conditions