

Terms and Conditions of Warren Board Sales Limited

1. Interpretation

1.1 Definitions:

- 'Buyer' means the person, firm or company who purchases the Goods from the Seller;
- 'Conditions' means these terms and conditions;
- 'Contract' means any contract between the Seller and the Buyer for the sale and purchase of Goods, incorporating these Conditions;
- 'Day' means any day from Monday to Friday other than a statutory holiday or public holiday in England;
- 'Delivery Point' means the place where delivery of the Goods is to take place under Clause 6;
- 'Goods' means any goods agreed in the Contract to be supplied to the Buyer by the Seller;
- 'Price' means the price of the Goods plus VAT as stated in any written acknowledgement of the Buyer's order or, if none, in the Buyer's order itself, plus Additional Charges and any other charges as referred to in clause 6;
- 'Seller' means Warren Board Sales Limited whose registered office address is 65 New Cavendish Street London W1G 7LS.

1.2 References to 'writing' or other cognate expressions includes a reference to fax transmission and e-mail but does not include text messages.

1.3 In these terms and conditions (unless the context otherwise requires):

- 1.3.1 any reference to a clause is to the relevant clause of these terms and conditions and any reference to a sub-clause is to the relevant sub-clause of the clause in which it appears;
- 1.3.2 the clause headings are included for convenience only and shall not affect the interpretation of these terms and conditions;
- 1.3.3 use of the singular includes the plural and vice versa; and 1.3.4 use of any gender includes the other genders.

2. Incorporation

- 2.1 Subject to any variation under clause 4 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including and terms or conditions which the Buyer purports to apply under any purchase order confirmation of order specification or any other document whatsoever).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order confirmation of order specification or any other document whatsoever shall form part of the Contract simply as a result of such a document being referred to in the Contract.
- 2.3 Any quotations submitted to the Buyer shall remain valid for the period stated therein, but if no period is specified such quotations shall be valid only for the date of issue. All quotations shall be subject to these Conditions.
- 2.4 Each order or acceptance of a quotation for the Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Goods are delivered in accordance with the Contract.
- 2.6 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

3. Orders and Specifications

- 3.1 In the event that the Buyer wishes to cancel an order, it may only do so with the written consent of the Seller. With regards to a cancelled order, 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.
- 3.2 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

4. Variation

- 4.1 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agree in writing and signed by a duly authorised representative of the Seller. The Buyer acknowledges that it has not relied on any statement promise or representation made or given by or on behalf of the Seller which is not set out in the Contract or in these Conditions. Nothing in this clause shall exclude or limit the Seller's liability for fraudulent misrepresentation.
- 4.2 The Price shall prevail unless before the date of despatch of the Goods or part thereof there is either;
- 4.2.1 in the case of Goods included in any of the Seller's current price lists an increase in the Seller's price(s) for such Goods above the list price(s) in force when the order was accepted or;
- 4.2.2 in the case of Goods not included in any of the Seller's current price lists an increase in the Seller's price(s) for comparable goods above those in force when the order was accepted in which case the Goods or the undelivered balance thereof shall be invoiced and paid for at the Price plus the amount of the relative increase(s).
- 4.3 All duties and charges are for the Buyer's account unless Goods are sold on free delivery terms. Any increase to the Seller in the cost of delivery (including but without limitation carriage freight consular certificates and all duties charges and insurances whatsoever) over the cost thereof calculated by the Seller at the date of the contract are for Buyer's account whether the Goods are sold on free delivery terms or not.
- 4.4 If by reason of any act of God governmental action war hostilities warlike operations or national emergency acts of terrorism protests riot civil commotion fire explosion flood epidemic lock-outs strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, the cost to the Seller of fulfilling the contract or any part thereof would exceed the cost calculated by the Seller at the date of the contract, the Seller shall give the Buyer notice thereof and it shall have the option (to be exercised in writing within 7 days of receipt of the notice) of paying such excess in addition to the price payable under the contract or of cancelling the contract or any unfulfilled part thereof in accordance with clause 3.1.

5. Risk and Title

- 5.1 Goods shall remain the property of the Seller until payment has been received by the Seller for the goods and for all other goods which have been delivered by the Seller to the Buyer at the time of payment for such former goods.
- 5.2 Until such payment the Buyer shall;
 - 5.2.1 keep such Goods in its capacity as bailee for the Seller; and
 - 5.2.2 store the Goods separately and clearly identify the Goods so that they can be clearly recognised as the property of the Seller.
- 5.3 The Buyer may dispose of the Goods in respect of which property has not passed hereunder in the ordinary course of its business as principal but only at such time as the Buyer has disposed of all goods of the same kind supplied by the Seller for which payment has already been made.
- 5.4 If the Buyer incorporates the Goods into other products before property passes (with the addition of its goods or those of others) or uses such Goods as material for other products (with or without such additions) the property in those products including the final product is upon such incorporation or use and by that event transferred to the Seller and the Buyer shall maintain records sufficient to enable the manufactured products and the Goods incorporated therein to be identified, measured or otherwise quantified.
- 5.5 a separate account to be opened by the Buyer for the purposes of receiving only the proceeds of such sales and be accountable to the Seller in respect thereof.
- 5.6 The Buyer hereby assigns to the Seller all rights and claims which the Buyer may have against its own customers arising from sales to its own customers referred to in clause 5.5 above until payment has been made to the Seller.
- 5.7 The Seller may appropriate payments by the Buyer to such Goods and accounts as it thinks fit, notwithstanding any purported appropriation by the Buyer to the contrary, and may make such appropriation at any time.
- 5.8 If before property in Goods has passed to the Buyer;
 - 5.8.1 the Buyer is in breach of any payment obligation hereunder; or
 - 5.8.2 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its 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 purposes 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 documents filed with a court for the appointment of an administrator of the Buyer or a notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) 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
 - 5.8.3 the Buyer suffers or allows any execution whether legal or equitable to be levied on its property or obtained against it; or
 - 5.8.4 the Buyer fails to observe or perform any of its obligations under the Contract or any other contract between the Buyer and the Seller; or
 - 5.8.5 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 5.8.6 the Buyer encumbers or in any way charges any of the Goods, then the Seller at its sole discretion may either
 - i) give notice to the Buyer terminating the Contract whereupon the Buyer shall at its own expense re-deliver such Goods to the Seller or;
 - ii) with or without notice take possession of and sell the Goods and is in such circumstances deemed to be irrevocably authorised by the Buyer to enter the premises on which the Goods are situated and remove the same at the Buyer's expense.
- 5.9 Notwithstanding the provisions of this clause risk in all Goods supplied shall pass to the Buyer on delivery.

6. Delivery

- 6.1 Deliveries made under the Contract shall be deemed to have been made in respect of separate sales of each weight, description or quality of Goods which each such delivery may comprise.
- 6.2 Unless otherwise varied in accordance with clause 4.1 delivery of the Goods shall be ex works the Seller's place of business in Leicester, United Kingdom.
- 6.3 Where the Seller agrees delivery at any location other than ex works in accordance with clause 6.2, the Buyer shall accept delivery of the Goods and shall promptly unload the Goods. For the avoidance of doubt, neither the Seller nor the Seller's carrier shall be responsible for unloading the Goods and the Buyer shall be charged for wasted time at the Seller's standard rate for wasted time and any other expenses incurred by the Seller ("Additional Charges") for:-
 - 6.3.1 wasted time for any delay in unloading; and/or
 - 6.3.2 each repeat delivery where the Seller or Seller's carrier leaves the Delivery Point and subsequently returns to the Delivery Point with the Goods as a result of the Buyer's inability or unwillingness to accept delivery and/or delay in unloading the Goods.
- 6.4 If for any reason the Buyer fails to accept delivery of the Goods when they are ready for delivery or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions documents licences or authorisations;
 - 6.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 6.4.2 the Goods shall be deemed to have been delivered;
 - 6.4.3 the Seller may store the Goods until delivery whereupon the Buyer shall be liable for all related costs and expenses (including but without limitation storage and insurance); and
 - 6.4.4 the Seller may sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price payable under the Contract and the price obtained in the sale.

- 6.5 Dates given for delivery are not to be treated as conditions of the sale, but will be kept to as closely as possible. No claim shall be made by the Buyer on account of late delivery.
- 6.6 In the event of any loss of or damage or delay to any Goods contracted to be delivered to the Buyer or to their order by a carrier at the Seller's risk notice of the same shall be given to the Seller in writing by the Buyer forthwith upon delivery of the Goods to the Buyer (or in the case of the loss of any Goods at the time when the Goods should have been delivered) and the Buyer shall at the same time take all necessary steps to notify the carrier in writing of any such loss damage or delay and shall in all cases where possible enter a note of the same upon the carrier's receipt. If by reason of the failure of the Buyer to give any such notices the Seller is precluded from making a recovery from the carriers in respect of the loss damage or delay complained of then the Seller shall not be liable for any claim by the Buyer in respect thereof and the Buyer shall remain liable to pay the Price for the Goods.

7. Non-Delivery

- 7.1 The quantity of any consignment of Goods as recorded by the Seller upon dispatch from the Seller's place of Business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.
- 7.2 The Seller shall not be liable for non-delivery of Goods (even if caused by the Sellers' negligence) unless the Buyer gives notice to the Seller of the non-delivery within 24 hours of the date when the Goods would in the ordinary course of business have been delivered.
- 7.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raise for such Goods.

8. Payment Terms

- 8.1 Unless otherwise stated in a quotation given by the Seller or in the form used to open the Buyers account with the Seller payment of the Price of the Goods is due in Pounds Sterling.
- 8.2 No payment shall be deemed to have been received by the Seller for the purposes of these Conditions until the Seller has received cleared funds in respect of the entire Price.
- 8.3 Unless otherwise specifically agreed in writing payment for each delivery is due within 30 days of delivery and payment on or before that date or upon the date(s) otherwise so agreed shall be a condition precedent to any further deliveries.
- 8.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off counterclaim discount abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 8.5 If the Buyer fails to pay to the Seller any sum due pursuant to the Contract then:
- 8.5.1 the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of HSBC Bank Plc accruing on a daily basis until payment is made whether before or after any judgement;
- 8.5.2 all invoices issued to the Buyer by the Seller in respect of any Goods sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Seller to the Buyer in respect of the same shall be cancelled forthwith; and
- 8.5.3 the Seller shall be entitled to withhold delivery of any Goods agreed to be sold by the Seller to the Buyer or any instalment thereof (being the subject of the Contract or any other contract) until the overdue payment and any accrued interest is made in full.

9. Return of Goods

- 9.1 The return of Goods shall not be made without the prior written agreement of the Seller.
- 9.2 The Goods must in the reasonable opinion of the Seller be in a perfect condition otherwise the Seller shall not accept their return.
- 9.3 Where Goods are returned the Buyer may at the sole discretion of the Seller be liable to pay a handling charge of 20% of the Price to apply whether or not delivery has taken place.

10. Limitation of Liability

- 10.1 Subject to clause 7 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions;
- 10.1.2 any use made or resale made by the Buyer of any of the Goods or of any product incorporating any of the Goods; and
- 10.1.3 any representation statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties conditions and other terms implied by common law or statute (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by Law from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Seller;
- 10.3.1 for death or personal injury cause by the Seller's negligence;
- 10.3.2 for any matter it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- 10.3.3 for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and 10.3:
- 10.4.1 the Sellers' total liability shall in contract tort (including negligence or breach of statutory duty) misrepresentation restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 10.4.2 the Seller shall not be liable to the Buyer for any pure economic loss of profit loss of business depletion of goodwill otherwise in each case whether direct indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 Subject to Clause 10.3 the Seller shall have no liability under the provisions of these Conditions or otherwise if the Goods have not been paid for by the due date for payment.
- 10.6 In the event of any claim being made by the Buyer, the Buyer shall give the Seller a reasonable opportunity to inspect the Goods in the same condition as they were at delivery after discovery of the defect and liability will not be accepted unless this procedure is followed

11. Assignment

11.1 The Seller may assign the Contract or any part of it to any person firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

12. Force Majeure

12.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including without limitation acts of God governmental actions war hostilities or warlike operations national emergency acts of terrorism protests riot civil commotion fire explosion flood epidemic lock-outs strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that if the event in question continues for a continuous period in excess of 3 months the Buyer shall be entitled to give notice to the Seller to terminate the Contract.

13. Export Licence Control

In the event that any of the Goods sold by the Seller are subject to export licence control the Buyer undertakes to ensure that they comply with all laws in force at the time when reselling the Goods.

14. General

14.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or otherwise.

14.2 If any provision of the Contract or these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal invalid void voidable unenforceable or unreasonable it shall to the extent of such illegality invalidity voidness voidability unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Seller of any breach of or any default under any provision of the Contract or these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

14.6 These Conditions and the documents referred to herein constitute the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to their subject matter.

14.7 The Contract shall be governed by and construed in accordance with English Law and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.

14.8 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice or shall be by telephone conversation with a duly authorised representative of the Seller and confirmed by letter, fax or e-mail within 24 hours