

A E Herbert Ltd

Conditions of Sale

GENERAL

- 1 (a) These conditions apply to all sales of goods to A E Herbert Ltd and shall prevail over any other terms or conditions contained or referred to in the Buyer's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless such other terms or conditions are specially agreed to in writing by the Seller. The Seller's agents shall not have authority to enlarge, vary or exclude any of these conditions. Any purported enlargement variation or exclusion thereof shall be without effect unless specifically agreed to in writing by the Seller and the buyer.
- (b) No terms or conditions of any main building contractor sub-contract shall affect these conditions whether or not the Seller has notice thereof.
- (c) The headings appearing above each condition are included for reference purposes only and shall not alter or limit the interpretation and effect of these conditions.

QUOTATIONS

- 2 A quotation by the Seller shall constitute an invitation to trade and not an offer. The Seller may withdraw or amend any quotation at any time prior to the Seller's acceptance of the Buyer's order.

ESTIMATES OF QUANTITIES AND ADVICE AS TO FITNESS FOR PURPOSE

- 3 Any estimates in respect of quantities needed or advice as to the suitability or fitness of any goods for any particular purpose given by the Seller or its servants or agents will be treated as without obligation or responsibility on the part of the Seller and the Buyer will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.

PRICE REQUIRED

- 4 (a) Subject to sub-clause (d) hereof, the price payable for the goods sold shall be contained in the Seller's current price list at the time of despatch, not withstanding that this may differ from the price stated in any quotation by the Seller, unless the price quoted was not a list price current at the time of quotation.
- (b) The Seller reserves the right to make such alterations to its price list as it thinks fit.
- (c) Subject to sub-clause (d) hereof, if there is no list price for the goods sold, or if the price quoted was not a list price current at the time of quotation, then the price to be paid shall be the price specified in the quotation provided that the order has been accepted within the period specified in the quotation.
- (d) In addition to having the right reserved by sub-clause (b) hereof, the Seller shall have the right at any time and without notice to revise the Price payable for the goods sold to take account of increases in cost (including (without limitation) costs of any goods or materials carriage labour or overheads the increase of imposition of any tax duty of other levy and any variation in exchange rate since the date of preparation of the current price list or (in cases falling within sub-clause (c) hereof) acceptance of the order.
- (e) Unless otherwise agreed by the Seller in writing all prices shall be deemed to be exclusive of Value Added Tax which shall be payable in addition by the Buyer at the rate prevailing at the tax point.
- (f) Unless otherwise agreed by the Seller reserves the right to charge the Buyer the cost of transportation of the goods to the destination requested by the Buyer.

TERMS OF PAYMENT

- 5 (a) Credit accounts may be opened subject to satisfactory credit references being obtained, in the Seller's sole discretion. Payment for goods supplied on a credit account shall become due and payable not later than the last day of the ninth following the month of delivery of the goods. In the event of there being any default by the Buyer in making payment as aforesaid the entire balance of the said account shall be payable forthwith and the Seller shall be entitled to charge interest thereon in accordance with sub-clause (d) hereof.
- (b) For all other transactions quotations shall be for cash with order. If cash is not paid with the order, the Seller shall have the right to require cash on delivery.
- (c) The Buyer shall not be entitled to withhold or set off payment of any amount due to the Seller under the terms hereof whether in respect of any claim by the Buyer in respect of goods supplied by the Seller or for any other reason which is contested or for which liability is not admitted by the Seller.
- (d) Without prejudice to the Seller's right to enforce payment if the Buyer fails to make payment as hereinbefore provided the Seller shall be entitled to charge interest on any balance outstanding from the date the same became due for payment at the rate for the time being on High Court judgement debts pursuant to section 17 of the Judgments Act 1838.
- (e) Interest shall become due and payable pursuant to the foregoing clauses not withstanding the fact that a portion of the account be subject to any dispute or query.
- (f) If in the case of any sale involving more than one delivery default is made in payment on the due date the Seller shall have the right forthwith to suspend any further deliveries until payment; or by notice in writing to the Buyer to terminate the contract in its entirety, whether or not the same is severable.
- (g) If at any time the Buyer (being an existing credit account customer) being a company shall alter its constitution or being a sole trader or partnership shall become incorporated or amalgamated with others it shall be the duty of the Buyer to give prior written notice to the Seller of the intended change (should the Buyer wish to continue credit account facilities following any intended change). Continuance of trading with the amalgamated entity or commencement of trading with a new entity shall be in the sole discretion and only deemed undertaken by the Seller if a written acknowledgment and acceptance is issued by the Seller's Credit Controller or Sales Director or Company Secretary.

DELIVERY

- 6 (a) Delivery dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates, nor shall time be of the essence of any contract.
- (b) Where delivery to site is undertaken by the Seller it is on the understanding that there is a suitable road to the point on the site where delivery is requested. If no such road exists delivery will be made to the nearest point to which in the opinion of the Seller's driver motor lorries can safely proceed and unload.
- (c) All necessary labour and equipment required to unload material promptly shall be supplied by the Buyer and the Seller's drivers shall not be responsible for unloading.
- (d) If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract the Seller shall be entitled to immediate payment in full for the goods so tendered. The Seller shall be entitled to store at the risk of the Buyer any goods of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of such storage and any addition cost or carriage incurred as a result of such refusal or failure.

RISK

- 7 The risk in the goods shall pass to the Buyer upon delivery.

TITLE TO GOODS

- 8 Until such time as the Seller has been paid in full for the price of the goods and the cost of packaging together with any interest and charges thereon and until such time as the purchaser has discharged all liability to the seller in respect of these or other goods in respect of which the buyer owes the seller money.
 - (i) Ownership of the goods shall remain in the Seller, and the buyer shall hold the goods as bailee fiduciary owner for the Seller
 - (ii) The Buyer has a right to sell and deliver the goods to third parties in the ordinary course of his business, acting towards such third parties as a principal and not as the Seller's agent, but hereby assigning to the Seller all rights and claims which the Buyer may have against its customers arising from such sales until full payment is made as aforesaid.

the goods are situated.

- (v) The Buyer shall afford to the Seller access to the goods during all normal business hours whether they are on land occupied or owned by the Seller or its customers and the Buyer shall deliver the goods up to the Seller at its request and allow the Seller to move the same. For this purpose the Buyer hereby grants an irrevocable right and licence to the Seller's servants or agents to enter upon the said land with or without vehicles during normal business hours.

SELLER'S LIABILITY.

- 9 (a) The Seller does not exclude liability for death or personal injury to the extent that it results from the negligence of the Seller, its servants or agents.
- (b) The Seller accepts liability for any breach on its part of any undertaking as to title implied by section 12 of the Sale of Goods Act 1979 or by section 8 of the Supply of Goods (Implied Terms) Act 1973.
- (c) The Seller does not accept liability for shortages in quantities delivered unless the buyer notifies the Seller of any claim for short delivery of the goods within two working days of the delivery to the Buyer or to the Buyer's instructions. In such circumstances the Seller's liability shall be restricted to making good the shortage.
- (d) The Seller agrees to repair or replace free of charge any goods which, in the opinion of the Seller, are defective due to a manufacturing fault, but only if the same is reported to the Seller in writing in two working days of delivery of the goods to the Buyer or the Buyer's order, but the Seller shall not be responsible either for the cost of removing any defective goods from any place where they are installed or affixed (or for making good the said place after removing or for the cost of installing or affixing in such place any repaired or replacement goods unless the same shall have been previously agreed in writing with a Director of the Seller.
- (e) Save as aforesaid, all liability for any representations whether oral or in writing and all guarantees, conditions or warranties whether expressed or implied by statute, common law or otherwise is hereby excluded, and the Seller shall not be liable for any loss (including consequential loss) damage or delay or expense of any kind whatsoever and howsoever caused (including by the negligence of the Seller its servants or agents).
- (f) Save as to the matters set out in (a) and (b) above, the Buyer acknowledges and agrees that he is able (if he so wishes) to insure against the risk of any loss (including consequential loss), damage or delay or expense of any kind whatsoever and howsoever caused (including by the negligence of the Seller its servants or agents).
- (g) If the Buyer is dealing as consumer as defined by section 12 of the Unfair Contract Terms Act 1977 the Seller does not exclude liability for obligations arising under sections 13, 14 and 15 of the Sale of Goods Act 1979 or under sections 9, 10 and 11 of the Supply of Goods (Implied Terms) Act 1973.
- (h) Where the or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability will attach to the Seller unless such fine tolerances are notified in writing to the Seller at any time of order and the Seller has acknowledged in writing that it is prepared to accept such order.
- (i) The Buyer shall indemnify the Seller against any liability that the latter may incur (whether as a result of or in connection with court proceedings or under the terms of a bona fide out of court settlement) as a result of a claim against the Seller under Part 1 of the Consumer Protection Act 1987 in respect of an alleged defect in the goods.

MEASURES

- 10 The Seller shall have the option to supply all or any of the goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric measure allowing for conversion.

PACKAGING

- 11 (a) A charge will be made by the Seller for packaging to cover the cost of labour and materials.
- (b) Crates and cases will be charged for but charges will be credited in full when returnable empties are returned to the Seller carriage paid and in good condition.
- (c) Pallets will be charged for but charges will be credited in full if returned to the Seller carriage paid in good condition within seven days of delivery. A charge may be made if damaged or retained for more than seven days.
- (d) Polythene sacks will be non-returnable.

CANCELLATION OF ORDERS

- 12 The Seller may in its sole discretion accept or reject the cancellation of any order once such order has been accepted by the Seller. The Seller will in no circumstances accept the cancellation of any order for goods which are to be specially made or obtained once such order has been accepted by the Seller nor will any allowance be made in respect of such goods where they are subsequently returned.

RETURN OF GOODS

- 13 The Seller in its sole discretion accept or reject the return of any goods which have been incorrectly ordered. In the event that the Seller decides to accept the return of such goods, such acceptance shall be upon such terms as the Seller may determine and in particular the Seller reserves the right to charge for the carriage and handling of such goods.

FORCE MAJEURE CLAUSE

- 14 The Seller shall be under no liability for any loss (including consequential loss), damage, or delay or expenses of any kind whatsoever caused wholly or in part by Act of God, outbreak of war, civil commotion, governmental policies or restrictions or control including restrictions or export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves the Seller its servants or agents, or by any other contingency whatsoever which is beyond the control of the Seller.

BUYER'S BANKRUPTCY OR INSOLVENCY

- 15 If the Buyer makes a proposal for or enters into a scheme of arrangement or a composition with his or its creditors or fails to comply with a statutory demand for the repayment of a debt within the time therein allowed, or if (where the Buyer is an individual or, where the Buyer is a partnership, in the case of an individual partner) an application is made to the court under Part VIII of the Insolvency Act 1986 for any interim order for the purpose of a voluntary arrangement a order is made for the administration of his estate pursuant Part VI of the County Courts Act 1984 or a bankruptcy petition relating to him is presented to the court, or he is adjudged bankrupt, or if (where the Buyer is a company) a petition for an administration order is presented to the court pursuant to Part II of the Insolvency Act 1986 or the Buyer passes a resolution or the court makes an order that it shall be wound up (otherwise than for the purpose of amalgamation or reconstruction) or a receiver or administrative receiver is appointed of any of the assets or undertaking of the Buyer or circumstances arise which entitle the court to appoint a receiver or administrative receiver or (where the Buyer is either a company or a partnership) which entitle the court to make a winding-up order or (whether the Buyer is a company, a partnership or an individual) the Buyer takes or suffers an similar action in consequence of debt the Seller may stop any goods in transit and suspend further deliveries and may forthwith determine the contract without prejudice to the continuation of the Seller's rights hereunder and to any existing claims.

NON-WAIVER OF RIGHTS

- 16 The failure by either party to the contract to exercise or enforce any rights conferred by the contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

NOTICES

(iii) The Buyer shall if required by the Seller store the goods in such a way as clearly to show the Seller's ownership of them.

(iv) The Buyer shall notify the Seller immediately upon demand by the Seller of the place or places where

17 Any notices hereunder shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address.