

Conditions of Sale

Applicable to all orders and supply of Company products.

Definitions

"Company" means Ziebe Limited.

"Contract" means the Purchaser's order accepted (by any means) by the Company together with these Conditions of Sale.

"Purchaser" means the person or Company whose order for the goods is accepted (by any means) by the Company.

"Goods" means all goods supplied under the Contract.

1. General

These conditions govern all contracts made by the Company to the exclusion of any other terms and conditions for the supply of Goods to the Purchaser.

No variation of these Conditions of sale shall be binding unless agreed in writing by an authorised representative of the Company.

No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including all costs of labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

No order which has been accepted by the Company and shipped to the Purchaser may be returned for credit by the Purchaser except with the agreement in writing of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including all costs of labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

2. Order and Specifications

The Company's quotations give rise to no legal obligation of the part of the Company and no order submitted by the Purchaser shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.

The Purchaser shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser and for giving the Company any necessary information relating to the goods within sufficient time to enable the Company to perform the Contract in accordance with its terms.

If the goods are to be manufactured or if any process is to be applied to the Goods by the Company in accordance with the specifications submitted by the Purchaser, the Purchaser shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in contesting pursuant or in settling any claim arising out of the Company's use of the Purchaser's specification. The Purchaser shall provide the Company of all assistance the Company may seek in connection with such a claim.

All drawings, descriptive matter, weights, dimensions and shipping Specifications submitted with the order and the descriptions and illustrations contained in catalogues, price lists and other advertisement matter are approximate only and are instead only to be present and a general idea of the goods supplied therein and none shall form part of the Contract unless specifically agreed.

3. Price of the Goods/Services/Charges

The price of the goods and services shall be the Company's quoted price or as subsequently confirmed in writing by the Company and shall be exclusive of any shipping charges and applicable value added tax, which the Purchaser shall be additionally liable to pay the Company. The Company reserves the right to increase the price of the goods to reflect any increase in cost to the Company, which is due to any factor beyond the control of the Company. If payment is by cheque the Purchaser agrees to pay the Company all charges in full for all cost incurred by the Company due to dishonoured cheque payments.

4. Terms of Payment

4.1 The Purchaser shall pay the price of the goods within 30 days of the date of Company's invoice. The time of payment of the invoice shall be the essence of the contract.

4.2 If the Purchaser fails to make full payment on the due date then without prejudice to any other rights and remedies available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries to the Purchaser

4.3 If the Purchaser fails to make full payment on the due date then without prejudice to any other rights and remedies available to the Company the Company shall be entitled to pass on to the Purchaser any charges, cost and fee's associated with collection of the Purchaser's debt for outstanding invoices.

4.4 The Company shall be entitled to charge statutory interest at 8% above the Bank of England base rate from time to time in force, calculated at a daily (both before and after judgement) upon any amount remaining unpaid.

4.5 The buyer shall pay all accounts in full and not exercise any rights of set-off or counter claim against invoices submitted by the seller.

5. Quantity and delivery

The Goods will be delivered by normal commercial means to the place, if any, named in the order or such other address in Great Britain or the Channel Islands as may be specified by the Purchaser. Carriage will be charged as applicable. Delivery by passenger train, boat or air freight will be charged as an extra.

Any dates quoted for the delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however so caused. Time for delivery shall not be relevant unless previously agreed by the Company in writing.

Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions of Sale or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

If the Purchaser fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right and remedy available to the Company the Company may:

- (i) store the Goods until actual delivery and charge the Purchaser the reasonable costs (including insurance) for storage, or
- (ii) sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account to the Purchaser for excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract.

6. Risk and Property and Variation

Risk of damage to or loss to the Goods shall pass to the Purchaser at the time of despatch to the Purchaser.

The Company will consider to repair or replace free of charge Goods damaged or lost in transit in the United Kingdom provided that the carriers and the Company receive written notification of such damage within 5 days of delivery of such loss, or within 7 days of the date of dispatch, whichever shall be earlier.

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions of Sale the property in the Goods shall not pass to the Purchaser until the Company has received payment in full for the Goods and any other Goods agreed to be sold by the Company to the Purchaser for which payment is then due.

Until such time as the property in the Goods passes to the Purchaser the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's Property. The Purchaser shall under no circumstances modify, tamper with or deal with in any way Goods until property in those Goods has passed to the Purchaser. Subject to this, the Purchaser shall be entitled to resell or use the Goods in the ordinary course of business. Where there are tangible proceeds, they shall not be mixed with the property of the Purchaser or any third party shall be properly stored, protected and insured and shall be held to the order of the Company.

The Company shall be entitled at any time to require the Purchaser to Deliver up the Goods to the Company the property in which remains in the Company and for which payment is overdue and if the Purchaser fails to do so forthwith either by themselves or their servants or agents to enter up the premises of the Purchaser or any third party where the Goods are stored and repossess the Goods. The Purchaser shall immediately on request by the Company or its duly authorised agents inform the Company or its agents of the whereabouts of the Goods and shall give every assistance in procuring the delivery to or the collection by the Company of the Goods.

The Company shall not be liable for any quantity discrepancies unless written notice thereof is received by it within 5 working days of delivery and the Company is given a reasonable opportunity of witnessing a re-check of the quantity before use or sale.

7. Warranties and liability

Subject as expressly provided in these Conditions of Sale all warranties, Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Further any liability of the Company for any representation or oral warranty given by the Company or its duly authorised agents prior to entering into the Contract is hereby expressly excluded save where that representation or oral warranty has been confirmed by the Company in writing prior to entry into the Contract.

Subject to the Conditions set out below the Company warrants that Goods will be free from defects in design, material and workmanship for a period of (6) months after the Goods have been delivered ("the Warranty Period") The above warranty is given by the Company subject to the following Conditions:

7.3.1 The Company shall be under no liability to the Purchaser in respect of any defects arising from fair wear and tear or any of the following acts or omissions of the Purchaser, wilful damage, negligence, misuse or alteration or repair of the Goods without the Company's written approval;

7.3.2 The Company shall be under no liability under the above warranty if the total price for the Goods has not been paid by the due date for payment;

7.33 notification by the Purchaser of the defect in accordance with Condition 7.6.

7.4 Where a valid claim is made under Condition 7.2 in the case of Goods of the Company's manufacture, the Company's liability shall be limited to making good free of charge, either by replacement or repair, at its entire discretion, defects which under proper use, appear therein.

7.5 In the case of Goods which are not of the Company's manufacture the Purchaser is entitled only to such benefits as the Company may receive under any guarantee or warranty given to it in respect thereto.

7.6 Any claim by the Purchaser within the Warranty Period shall be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) as soon as reasonably practicable and in any event within 7 days of the discovery of the defect or failure or the date upon which the defect or failure should have been reasonably discovered whichever is the earlier. The Purchaser undertakes that on delivery of the Goods to the Purchaser the Purchaser will undertake a thorough inspection and test of the Goods.

7.7 Except in respect of death or personal injury caused by the Company's negligence or as provided in the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation, or any implied or collateral warranty, condition or other term or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise), which arise out of or in connection with the supply of Goods or their use or resale by the customer, except as expressly provided in these conditions.

7.8 In the event that any work carried out by the Company for the Purchaser is suspended or delayed for a period of thirty days or more at the request of any default on the part of the Purchaser, the Company shall, in addition to any other right or remedy that it may have as a result of such suspension or delay, be entitled to payment upon the expiry of the period of thirty days, for all work carried out by it up to the date of commencement of such suspension or delay, together with all costs incurred by the Company in relation to such work including without limitation, the costs of materials specially ordered, storage charges and other additional costs.

8. Insolvency of Purchaser

If the Purchaser makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrance takes possession, or a Receiver is appointed, of any of the property or assets of the Purchaser ceases, or threatens to cease, to carry on business or the Company has reasonable grounds to believe that any of the aforementioned events may occur then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Goods have been delivered or collected but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, alternatively the Company may at its election require the immediate return of the Goods not paid for and in the event of the Purchaser's failing to return the Goods to the Company's works, the Company or its authorised representatives may enter upon the premises of the Purchaser or any third party where the Goods are situated to collect the Goods, the Purchaser hereby agreeing to grant every assistance to the Company or its authorised representatives in the collection of the Goods. In all instances the Company retains full title of all goods and materials supplied until payment is received and cleared in full.

9. Miscellaneous

Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by the Company. The Contract shall be governed by the laws of England.

Any notice required or permitted to be given by either party to the other under these Conditions of Sale shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may from the relevant time be notified pursuant to the provision to the party giving the notice. All notices shall be sent by first class post or hand delivered and shall be deemed to be served 72 hours after the date of posting.

Any failure on the part of the Company to insist on the strict performance of any of the terms and conditions of this order shall not be deemed a waiver of any rights or remedies of the Company against the Purchaser and shall further more not be deemed a waiver of any subsequent breach of the Purchaser of these terms and conditions.

All terms herein is the essence of any contract between the Company and the Purchaser and the Purchaser agrees that in all instances the Company's terms take precedent over their own terms of trading.

It should be noted that each provision of this contract shall be read and construed independently of the other provisions so that if one or more are found to be void or unenforceable as being unreasonable or for any other reason, the remaining provisions shall not be affected, and

If any provision is found to be void but would be valid and enforceable if some part of it were deleted, that provision shall apply with such deletion as may be necessary to make it valid and enforceable.