

# CONDITIONS OF SALE

## GENERAL

- In these Conditions
  - Royde & Tucker is called "the Company" and the individual, firm, company or other party with whom the Company contracts is called "the Customer".
  - "Goods" means the goods, articles and materials, which are to be supplied by the Company pursuant to the Contract (as hereinafter defined).
- Any contract between the Company and the Customer ("the Contract") shall incorporate and be subject to these Conditions according to their provisions which shall not be varied or abrogated unless such variation or abrogation is evidenced in writing signed on behalf of the Company and such evidence contains a specific reference to the conditions being varied or abrogated.
  - The only terms of the Contract shall be those contained expressly or by reference in the Company's acceptance of order form (if any) and any statement or representation written or oral made or given prior to the date of the Contract is hereby excluded unless expressly incorporated therein.

## MODIFICATIONS

- The cost of any variation or modification in the design, specification, materials or drawings of the goods or any development thereof requested by the Customer after the date of the Company's acceptance of order (if any) shall, if such variations or modifications are accepted by the Company, be borne by the Customer.
  - Where goods are manufactured to the Customer's specification the Company reserves the right to over produce or under produce the relevant quantities by up to seven per cent and the Customer agrees to accept and pay for such amended quantities without objection in full satisfaction of the relevant order.
  - Where goods, at the Customer's request, incorporate a non-standard finish the Company reserves the right to over produce or under produce the relevant quantities by up to five per cent and the Customer agrees to accept and pay for such amended quantities without objection in full satisfaction of the relevant order.

## DELIVERY AND RISK

- For delivery within the UK mainland and save where otherwise agreed between the Company and the Customer in the case of orders for goods of an aggregate value of £350 or more (net of Value Added Tax) the Company will arrange delivery of the goods by a carrier selected by the Company at the Customer's expense to the Customer's own works. Direct deliveries to other addresses may be arranged but will be subject to a £10 surcharge and under no circumstances will any claim for damage or non-delivery be considered for direct deliveries provided the carrier obtains a signed acknowledgement of delivery. The risk in respect of all Goods shall pass to the Customer at the time of delivery. Notwithstanding such delivery, the property in and title to the goods shall not pass to the Customer except as provided in Clause 5 Where the Customer requests the Company to arrange delivery by a carrier selected by the Customer or on a special basis by a carrier selected by the Company. The Company shall on behalf of the Customer and at the Customer's expense arrange for the carriage of the goods and the relevant carrier shall be the agent of the Customer. Special notice is directed to the fact that in accordance with the provision of Section 32 of the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances constitute delivery to the Customer. The Company shall for the purposes of Section 32 of the Sale of Goods Act 1979 be deemed to have the Customer's authority to make such contract with the carrier which the Company considers reasonable.
  - Where damage to or loss of the goods occurs before delivery thereof to the Customer, the Company undertakes (subject as provided below) to replace or (at its discretion) to repair free of charge any goods damaged or lost in which event the time for delivery of the damaged or lost goods shall be extended for such period as the Company shall reasonably require for such replacement or repair. The foregoing undertaking of the company is conditional upon:
    - The Customer giving written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier (if other than the Company) within seven days of the receipt of the goods or, in the case of total loss, within seven days of receipt of the Company's or the carrier's delivery advice or other notification of despatch; and
    - The Customer requesting the Company and at the Customer's cost returning any damaged goods, cases and packing materials to the Company's works within one month of receipt thereof.
  - Where the goods are not manufactured or supplied directly by the Company and are delivered direct to the Customer by, or collected by the Customer from the manufacturer or supplier the Company shall not be liable for any damage to or loss of the goods whatsoever or whosoever occurring.
  - Save as expressly provided in this Condition, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.

## TITLE

- Until the Company has received full payment for the goods comprises in this Contract between the Company and the Customer:
  - The title to and property in the goods shall remain vested in the Company (notwithstanding the delivery of the same and the passing of the risk therein). Until the title to and the property in goods passes, the Customer must keep the goods free from any charge, lien or incumbrance.
  - The Company may at any time and from time to time until the property in the goods has passed require the goods to be returned to it if this requirement is not immediately complied with may recover the goods and shall have the right and power to sell the goods without prejudice to such other rights as the Company may have and any such return or recovery shall be without prejudice to the obligation of the Customer to purchase the goods for the purposes of the contract. In any event under this sub clause (b) the Company, its servants or agents together with any necessary and appropriate transport shall be entitled to free and unrestricted entry upon the Customer's premises and/or all other locations where goods are situated.
  - The Customer shall possess the goods as bailee of the Company if the Company so requires. The Customer shall store the goods for the Company in a proper manner without charge to the Company and ensure that they are clearly identified as belonging to the Company. Whilst the goods are in the possession of the Customer and before the title to the property in the goods has passed to the Customer, the Customer shall keep the goods in the same condition as that in which they were delivered and make good any damage or deterioration. The Company shall be entitled to examine the goods in storage at any time during normal business hours and upon giving the Customer reasonable notice thereof.
  - The Customer (as agent of and for the account of the Company) may agree to re-sell the goods in its possession in the ordinary course of trading provided the Company has not required their return and provided none of the events mentioned in condition 12 have occurred. Any such agreement to sell shall not prejudice the Company's title or right to recover possession of the goods, except where title becomes properly vested in some other person by the operations of law. The Customer must not otherwise deal with or dispose of the goods until the property in the goods has passed to it.
  - Upon the re-sale of the goods by the Customer the proceeds of sale thereof shall be the property of the Company and accordingly held by the Customer in trust for the Company.
  - In addition the Company shall be entitled to recover directly from the Customer's customer any such proceeds of sale unpaid by such customer provided that, The Company shall retain the right to recover any monies recovered in excess of the amount than owed by the Customer to the Company. The Company being entitled to deduct from such excess the costs and expenses being incurred by it in the recovery of such monies and the Customer shall render such assistance (including taking proceeding, in its own name against such customer) as the company may reasonably require (but at the cost of the Customer) in connection with the recovery of such proceeds.
  - Nothing in this condition 5 shall:
    - entitle the Customer to return the goods to or delay payment thereof; or
    - constitute or be deemed to have constituted the Customer as the agent of the Company otherwise than for the purpose of this Condition 5; or
    - authorize the Customer to give or make any representation or warranty to any third party in relation to the goods which shall be binding on the Company unless the Company shall have authorized the Company to do in writing.
  - The rights and remedies conferred upon the Company by the Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

## RETENTION OF TITLE

- Legal title in the goods shall not pass to the buyer until all sums due on the sellers account have been paid.

## PERFORMANCE

- The Company will use its reasonable endeavours to comply with any dates or dates for despatch or delivery of the goods as stated in the Contract, but unless the Contract otherwise expressly provided such date or dates shall constitute only statements of expectation and shall not be binding. If the Company having used its reasonable endeavours fails to despatch or deliver the goods by such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom. Time for delivery is not of the essence of the Contract.
  - If the Company shall be prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) acts of God, civil commotions, strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered provided that in the event that the performance of the Contract shall be suspended for more than three consecutive calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the Contract or to cancel any outstanding part

thereof and in such circumstances the Customer shall pay at the Contract rate for all goods and materials used by the Company to the actual date of such termination. The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract in the aforementioned circumstances.

- Where goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and same as provided in Condition 6 (d) no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.
- Where goods are to be supplied or delivered by the Company in accordance with periodic delivery schedules or similar notification of the delivery schedules or similar notification of the delivery requirements of the Customer, the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Customer to be a firm requirement without the prior written consent of the Company and the Company shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of such cancellation or variation.
- When expedited delivery or completion is agreed to by the Company and necessitates overtime or other additional costs, the Customer shall reimburse the Company for the amount of such overtime payment or other costs. Where postponement of delivery or completion is agreed by the company the customer shall if required by the company pay all cost and expenses (including a reasonable charge for storage and insurance of the goods) occasioned thereby but the goods shall be held at the customer's risk as from the time of postponement.

If performance of the contract is suspended at the request of or delayed through default of the customer including (without prejudice to the generality of the foregoing) lack of incomplete or correct instructions or refusal to collect or accept delivery of the goods for a period of ten days or more, the company shall then be entitled to payment at the contract rate for goods supplied or ordered and any other additional costs thereof incurred including storage and insurance provided that if the customer shall to collect or accept delivery of the goods or any part thereof within 28 days of written notification from the company that the goods are ready for collection or delivery, the Company shall be entitled (without prejudice to its other remedies under the contract for such breach) to sell or at its option destroy the goods and to apply the proceeds of sell thereof if sold and the scrap value if destroyed towards payment of a sum due to the company under the contract.

## ACCEPTANCE

- The customer shall inspect the goods immediately on receipt and the customer shall be deemed to have accepted the goods as being in conformity with the contract and shall be bound to pay for them, unless written notice of rejection thereof is received by the Company within three days of delivery. Goods accepted by the customer cannot subsequently be returned.
  - If after notice of rejection has been given, the customer deals with the goods as owner thereof or if any conduct of the customer is inconsistent with such rejection or with the ownership of the goods by the Company, the customer shall be deemed to have accepted them and be bound to pay the contract price.

## PAYMENT

- The contract price for the goods shall be payable net cash later than the end of the month following the month in which the invoice for the relevant goods is issued by the Company unless otherwise agreed in writing.
  - Where goods are delivered or performed by instalments, the customer shall be obliged to pay for each instalment upon the terms set out in sub-clause (a) of this clause.
  - The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company upon the expiration of seven days notice in writing to the customer to suspend further deliveries of the goods pending payment without prejudice to any other remedy available to the Company.
  - Unless otherwise agreed in writing the customer shall not be entitled to set off against any monies due to the company under the Contract any amount claimed by, or due to the customer by the company whether pursuant to the contract or on any other account whatsoever.
  - The company shall be entitled to interest on any part of the Contract price not paid by its due date from the date until actual payment at the rate of 3% per annum above the Base Lending Rate of the Midland Bank plc prevailing from time to time during such period.
  - All prices appearing on the company's price list or any other literature are net of value Added Tax which shall be payable by the customer at the relevant prevailing rate.

## DRAWINGS AND SPECIFICATIONS

- The Company gives no guarantee or representation that the illustrations, weights and dimensions specified in the company's catalogues and literature are accurate or that they will be identical with the goods therein displayed due to improvements and modifications to the goods or their specifications that may be made from time to time.

## WARRANTY

- Where any goods are not manufactured by the Company the Company agrees (so far as it is able and entitled to do so) to give to the Customer the full benefit of any warranties as to the goods given to the Company by the manufacturer of such goods.
  - The liability of the company for any claim or claims for direct injury, loss or damage made by the customer against the company whether in contract or in tort (including negligence on the part of the company, its servants or agents) arising out of or in connection with any defect in the goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or the breach of a fundamental term thereof) of the Company its servants or agents in the performance of the contract (including, without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever) shall be limited in the case of any defect in the goods to the contract price of the goods the subject of the claim or claims and, in any other case to the total contract price payable by the customer under the Contract.
  - The company shall not be liable for any claims for indirect or consequential injury loss or damage made by the customer against the Company whether in contract or in tort (including negligence on the part of the Company its servants or agents) arising out of or in action with or without negligence, act, omission, neglect or default referred to in sub clause (b) of this Condition.
  - Nothing in these conditions shall:
    - limit or exclude the liability of the company in respect of death or personal injury resulting from the negligence of the company, its servants or agents; or
    - limit or exclude the respective rights and remedies of the Company and the Customer under the Unfair Contract Terms Act 1977; or
    - exclude the conditions of warranties implied by Section 12 of the Sale of Goods Act 1979 and, whether the Customer deals as a consumer, the conditions implied by Sections 13 to 15 inclusive of the said Act.

## LIEN

- Without prejudice to any other rights and remedies which the Company may have under the contract, the company shall in respect of a debts due and payable by the customer to the company have a general lien on all goods and property belonging to the customer in its possession (whether worked for or not) and shall be entitled upon the expiration of fourteen days notice to the customer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## INSOLVENCY AND BREACH OF CONTRACT

- In the event that:
  - The customer shall commit any breach of the Contract and shall fail to remedy such breach (if capable of remedy) within a period of fourteen days from receipt of notice in writing from the company, requesting such breach to be remedied, or
  - any distress or execution is levied upon any of the goods or property of the customer; or
  - the customer (or where the customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or commits any act of bankruptcy; or
  - any partner (being a limited company) has a Receiver appointed at the whole or any part of its undertaking property or assets or an order is made or a resolutions passed analogous proceedings are taken for the winding up of the customer (save for the purpose of reconstruction or amalgamation) without insolvency and previously approved in writing by the company.The company shall thereupon be delivered, without prejudice to its other rights hereunder, forthwith to suspend all further deliveries until the default has been made good or to determine the contract or any unfulfilled part thereof or at the company's option to make partial supplies of goods. Notwithstanding any such termination, the customer shall pay to the company rates for goods delivered up to and including the date of termination.

## SEVERANCE

- If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions thereof shall not in any way be affected or impaired thereby.

## WAIVER

- The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the company nor by any failure or delay by the Company in asserting or exercising any such right or remedies.

## LAW

- These conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the customer irrevocably submit to the exclusive Jurisdiction of the English courts.