

TEX TECH INDUSTRIES (UK) LTD

TERMS AND CONDITIONS OF SALE

DEFINITIONS

1. **IN** these Conditions the following expressions shall have the following meanings:
- (1) "the Company" means Tex Tech Industries (UK) Ltd and also where the context so permits its assigns and any subcontractor for the said company;
 - (2) "Goods" means the articles or things (or any instalment or part of them) or any of them described in the Contract;
 - (3) "the Buyer" means the person firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such person firm or company;
 - (4) "Company's Premises" means the premises mentioned in the Company's quotation or other contractual document or if not so mentioned means the Company's works at Station Mills, Station Road, Wyke, Bradford, BD12 8LA;
 - (5) "the Contract" means the Company's quotation for the sale or supply of the Goods and any document referred to therein, these Conditions of Sale, the Buyer's order for the Goods and the Company's acknowledgement thereof and if there shall be any inconsistency between the documents comprising the contract they shall have precedence in the order herein listed.

GENERAL

2. (1) These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to the Company and the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.
- (2) Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.
- (3) If in any particular case any of these Conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

ORDERS

3. **NOTWITHSTANDING** that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

PRICES

4. (1) **THE** price payable for Goods shall be as quoted by an authorised representative of the Company.
- (2) Unless otherwise expressly stated to be firm for a period the Company's prices are subject to variation to take account of variations in wages, materials or other costs since the date of the order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original contract price.
- (3) All prices are exclusive of Value Added Tax and this will be charged at the appropriate rate.

ADDITIONAL COSTS

5. **THE** Buyer agrees to pay for any loss or extra cost incurred by the Company through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Buyer its servants agents or employees.

PATENTS

6. **THE** Buyer shall indemnify the Company against all costs claims losses expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or any other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

TERMS OF PAYMENT

7. (1) **UNLESS** otherwise agreed by the Company in writing payment shall be due in cash not later than 30 days following date of invoice ("the Due Date") save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Condition 16 hereof.
- (2) If the Goods are delivered in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the part of the Company.
- (3) If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- (4) The price of the Goods shall be due in full to the Company in accordance with the terms of the Contract and the Buyer shall not be entitled to exercise any set-off lien or any other similar right or claim.
- (5) The time of payment shall be of the essence of the Contract.
- (6) Without prejudice to any other rights it may have the Company is entitled to charge interest at 4% above the then Current Base Rate of Barclays Bank PLC on overdue payments of the price of the Goods or the price of any instalments thereof.

DELIVERY

8. (1) **THE** period for delivery shall be the period within which the Goods are intended to be despatched from the Company's Premises and shall be calculated from the time of the receipt by the Company of the Buyer's order or from the receipt of all necessary information to enable the Company to manufacture or procure the manufacture of the Goods whichever shall be the later and the Buyer shall take delivery of the Goods within that period.
- (2) All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of any contract nor shall the Company be under any liability for any delay beyond the Company's control.
- (3) Where the goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
- (4) The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- (5) No liability for non-delivery short delivery loss of or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):-
- (a) within three days of delivery for short delivery loss damage or non-compliance with the Contract or
 - (b) within seven days of the date of the invoice for non-delivery.
- (6) In the event of a valid claim for non-delivery loss damage or non-compliance with the Contract the Company undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.
- (7) If the Buyer shall fail to give notice in accordance with Condition 8(5) above the Goods shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly.
- (8) If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its other rights store the Goods at the risk of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer, provided that the Buyer shall be immediately informed thereof.
- (9) The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

RETURNS

9. (1) **GOODS** supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense.
- (2) Without prejudice to the generality of sub-clause (1) above, no return of any items produced specifically in accordance with the Buyer's specification shall be allowed.

CARRIAGE

10. (1) In all cases the prices are exclusive of carriage and insurance to the Buyer's premises.
- (2) All orders for UK-based customers shall be delivered EXW
- (3) Export orders shall be delivered FCA Wyke

PASSING OF TITLE AND RISK

11. (1) **FROM** the time of delivery the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or become due to the company from the Buyer have been made in full and unconditionally.
- (2) Whilst the ownership of the Company continues the Buyer shall keep the Goods separate and identifiable from all other goods in its possession as bailee for the Company.
- (3) In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdraft bank account and shall at all times be identifiable as the Company's money.
- (4) In the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- (5) Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

CONDITIONS AND WARRANTIES

12. (1) **THE** Contract shall not constitute a sale by description or sample.
- (2) Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated. In particular, but without prejudice to the generality of the foregoing, the Buyer must satisfy himself that the Physical properties of Goods satisfy his requirements. The Buyer should contact the Company's sales office should the Buyer have any queries. The address of such office appears on the despatch note sent to the Buyer.

DEFECTIVE GOODS

13. (1) **IN** substitution for all rights which the Buyer would or might have but for these Conditions the Company undertakes in the case of Goods manufactured by the Company that if within three months of delivery of any item of the Goods a serious defect in materials or workmanship appears therein it will at its own discretion either credit to the Buyer in full the price paid by the Buyer to the Company for such item or repair it or supply a replacement thereof free of charge at the place of delivery specified by the Buyer for the original Goods provided that in any case they have been accepted and paid for.
- (2) In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.
- (3) In order to exercise its rights under this Condition the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall at the Company's written request return the defective Goods carriage paid to the Company's Premises.
- (4) Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts omissions negligence or default of the Buyer its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the Goods.
- (5) Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
- (6) Nothing herein shall have the effect of excluding or restricting the liability of the Company for death, personal injury or fraudulent misrepresentation resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

BUYER'S DRAWINGS

14. **THE** Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bills of quantities or specifications supplied by the Buyer.

CONSEQUENTIAL LOSS

15. **THE** Company shall not be liable for any cost claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits income production or accruals or loss of such profits income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.

DEFAULT OR INSOLVENCY OF BUYER

16. **IF** the Buyer shall in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a receiver administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed or if in the reasonable opinion of the Company the credit standing of the Buyer has been worsened or impaired, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any defaults by the Buyer be remedied. In no event shall the Buyer be entitled to set off or withhold any sums due against or in respect of any liability of the Company to the Buyer save with the consent in writing of the Company

LIMITATION OF LIABILITY

17. **THE** aggregate liability of the Company to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods.

REPRESENTATIONS

18. **NO** statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to enlarge vary or override in any way any of these Conditions.

FORCE MAJEURE

19. **THE** Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strikes lock-outs accidents war fire reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

CANCELLATION

20. **SAVE** as provided in Conditions 16 and 19 hereof, contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

SUB-CONTRACTING

21. **THE** Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person firm or company.

HEADINGS

22. **THE** headings in these Conditions are intended for reference only and shall not effect their construction.

PROPER LAW

23. **THE** Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to non-exclusive jurisdiction of the English Courts.