

# CONDITIONS OF SALE

- 1. Definitions**
  - 1.1 "Buyer" means the person who buys or agrees to buy the goods from the Seller.
  - 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
  - 1.3 "Goods" means the articles which the Buyer agrees to buy from the Seller.
  - 1.4 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT.
  - 1.5 "Seller" Drywite Limited the registered office of which is situate at PO Box 1, The House of Lee, Park Lane, Cradley Heath, West Midlands, B63 2RB.
- 2. Conditions Applicable**
  - 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
  - 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
  - 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
  - 2.4 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 3. The Price and Payment**
  - 3.1 3.1.1 Subject to Clause 3.2 below the Price of the Goods shall be the price stipulated in the Seller's published price list current at the date of delivery of the Goods (less any discount agreed in writing with the Buyer by the Seller). The price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
  - 3.1.2 If by reason of changes in such items or any other clause outside the control of the Seller, the cost of the goods to the Seller is increased notwithstanding the provisions of Condition 3.1 hereof the Seller reserves the right to increase the Price of the Goods (and invoice the Buyer accordingly) by reference to the rates costs and regulations ruling at the date the Goods are delivered or by reference to such other causes as may apply.
  - 3.2 The Buyer shall pay on request any increase in packing and transportation costs occurring between the date of quotation and the date of delivery.
  - 3.3 Payment of the Price and VAT shall be due on the last working day of the month following the end of the month in which the Goods are delivered. Time for payment shall be of the essence.
  - 3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 5% above the base rate of Barclays Bank PLC from time to time in force and shall accrue at such a rate after as well as before any judgement.
  - 3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:-
    - 3.5.1 suspend or cancel deliveries of any articles due to the Buyer, and/or
    - 3.5.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
  - 3.6 The Seller will take all reasonable steps to deliver the goods as soon as practically possible after the date of the order but the Seller accepts no responsibility for any failure to do so.
- 4. The Goods**

The description of the Goods shall be as set out in the Seller's published price list.
- 5. Warranties and Liability**

The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller.
- 6. Delivery of the Goods**
  - 6.1 The Goods shall be delivered to the Buyer at the Seller's address when the Buyer shall make all necessary arrangements to take delivery of them. The risk in the Goods shall pass to the Buyer upon such delivery-taking place.
  - 6.2 Time shall not be of the essence in relation to delivery. No delivery will be made until any required advance payment or letter of credit has been made or presented or until receipt of any import licence, where necessary, have been notified to the Seller.
  - 6.3 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
  - 6.4 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full when delivered.
- 7. Acceptance of the Goods**
  - 7.1 The Buyer shall be deemed to have accepted Goods immediately after delivery to the Buyer.
  - 7.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
  - 7.3 If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns Goods to the Seller before the date when payment of the Price is Due.
- 8. Title and Risk**
  - 8.1 The Goods shall be at the Buyer's risk as from delivery.
  - 8.2 In spite of delivery having been made property in the Goods shall not pass from the Seller:-

the Buyer shall have paid the Price plus VAT in full, and no other sums whatever shall be due from the Buyer to the Seller.
  - 8.3 Until property in the Goods passes to the Buyer in accordance with Clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
  - 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
  - 8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any Goods has not passed from the Seller.
  - 8.6 Until such time as property of the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request then rights of the Buyer under Clause 8.4 shall cease.
  - 8.7 The Buyer shall not pledge or in any way change by way of security for any indebtedness any of the Goods which are the property of the Seller, without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
  - 8.8 The Buyer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 9. Remedies of Buyer**
  - 9.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods, which conform to the contract of sale.
  - 9.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
  - 9.3 The Seller shall not be liable to the Buyer for late delivery of the Goods.
  - 9.4 The Seller shall be under no liability whatever to the Buyer for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
  - 9.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
  - 9.6 9.6.1 the Buyer shall inspect the Goods on delivery and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
  - 9.6.2 If the Goods are not in accordance with the contract for any reason the Buyer's sole Remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.
  - 9.6.3 All warranties and conditions whether implied by statute or otherwise are excluded  
From this contract Provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect statutory rights of a buyer dealing as consumer.
- 10. Proper Law of Contract**

This contract is subject to the law of England and Wales.
- 11. Notices**

Any notice required to be served pursuant to this contract of sale shall be in writing and served by first class post or by hand on the Seller at its registered office or such other address as the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principal place of business.
- 12. Insolvency or other default**

If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make an arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:-

  - 12.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without
  - 12.2 liability upon its part, and/or exercise any of its rights in accordance with these Conditions.
- 13. Set-Off and Counterclaim**

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatever.
- 14. Back Orders**

The Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (including goods of the Buyer which have been paid for) for the unpaid price of all goods sold to the Buyer by the Seller under this or any other contract.
- 15. Cancellation by the Seller**

The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Storage**

Payment for any of the Goods which the Buyer asks the Seller to hold for a period longer than 7 days after the date upon which delivery is due shall be made as if delivery had taken place on such due delivery date and the Seller reserves the right to charge the Purchaser for storage of the goods from such date until the date of actual delivery.
- 17. Patent Rights**
  - 17.1 The sale of any goods and the publication of any information or technical data relating thereto does not imply freedom from the patent or other protective rights in respect of their application and the Seller accepts no liability for infringement of such rights.
  - 17.2 The Buyer shall indemnify the Seller against all royalties or other payments in respect of any patent registered designs or other rights, which may be claimed as a result of goods being made according to design or specifications supplied by the Buyer. The Buyer shall further indemnify the Seller all claims, expenses and costs in connection with any infringement of any patent registered design or other right in manufacture of such goods.