

CONDITIONS OF SALE

GENERAL

1. All products ("Products") are sold by us and services supplied by us subject to the following terms and conditions ("these Conditions") which are the only terms upon which we carry on business and unless previously agreed in writing by an authorised officer of our Company (i) no oral, written or other addition to, or variation or waiver of these Conditions shall be effective and (ii) these terms and conditions supersede any other terms and conditions appearing elsewhere and shall prevail over and exclude any other terms or conditions stipulated or incorporated or referred to by the customer ("the Customer") or his agent or any third party. The giving of any delivery instructions, the acceptance of or payment for any Products or services or any conduct in confirmation of any transaction contemplated by these Conditions shall constitute unqualified acceptance by the Customer of these Conditions.

QUOTATIONS

2. Our catalogues, price lists and quotations do not constitute offers made by us and no order (whether made pursuant to a quotation or not) shall create a contract unless it is accepted by us either in writing or by the despatch of the Products ordered. We reserve the right to withdraw or revise any catalogue, price list or quotation at any time prior to acceptance of an order.

PRICE

3. AU prices are exclusive of delivery and packaging costs, VAT and other duties and levies which will be charged to the Customer in addition to the price. Delivery and packaging will be charged to the Customer at cost unless otherwise agreed in writing.

MISREPRESENTATIONS

4. None of our employees, other than the Secretary or a Director of the Company, is authorised to make any statement or warranty or representation as to the Products. We shall therefore be under no liability whatsoever nor shall the Customer be entitled to any remedy by reason of the Misrepresentation Act 1967 except to the extent (if any) that the Court may allow reliance on it as being fair and reasonable.

OWNERSHIP

5. (a) The property in the Products shall remain vested in us until both (i) the payment of the total price for the Products has been received and (ii) any other payments due to us from the Customer have been made. (b) Until the payments referred to in paragraph (a) above have been made in full:-
(i) The Customer shall hold the Products as fiduciary agent for us and shall mark the Products with an indication that they remain our property and they shall be kept separate and identifiable from any other products in the Customer's possession. The Products shall not be sold or encumbered and shall be returned to us upon request and all the incidence associated with a fiduciary relationship shall apply.
(ii) We shall have the right with or without prior notice at any time to retake possession of the whole or any part of the Products (and for that purpose shall be granted an irrevocable licence to go upon any premises occupied by the Customer).
(iii) We shall have the right to dismantle the Products or detach the Products from any items in which they may have been incorporated without prejudice to any of our other remedies. (c) The Customer shall indemnify us against all costs and liabilities which we incur in retaking possession of the Products (or any part thereof or in exercising any of our rights under this Clause 5 including without limitation any liability in respect of any damage caused to any premises in retaking possession of and removing the Products which it was not reasonably practicable to avoid. (d) Notwithstanding that ownership of the goods remains with us, we shall be entitled to maintain an action for the price of the goods in the event of default in payment by the Customer.

ACCEPTANCE OF ORDER AND SUBSEQUENT VARIATION OR CANCELLATION

6. The Customer's order must be accompanied by all information and instructions necessary to enable us to fulfil the order. In the event that an accepted order is, with our approval, varied at the Customer's request we shall be at liberty to vary the contract price to take account of any additional work or cost to ourselves. Once we have accepted an order no cancellation in whole or in part can be made by the Customer without our consent which will normally only be granted (a) where we can cancel any relevant order placed with our own supplier and (b) on terms that a cancellation charge is paid by the Customer to cover all expenses and charges incurred by us and our loss of profit on the contract.

ACCEPTANCE OF GOODS

7. Unless we are notified to the contrary by telephone or fax on the day of delivery (and, in the case of notification by telephone, written confirmation is received within two days) the Products shall be deemed to have been accepted by the Customer as being in good condition and in accordance with the order. The Customer shall not be entitled to withhold payment of all or any of the purchase price while any claim is being investigated by us.

TERMS OF PAYMENT

8. (a) Unless credit terms have been agreed by us in writing, payment for Products shall be made in full in sterling within 30 days of the date of despatch. Our invoice shall be issued on the date of despatch of the Products. (b) If full payment is not received by the due date for payment:-
(i) Interest shall be payable by the Customer on the unpaid amount from the due date for payment until receipt of the full amount (whether before or after judgement) on a daily basis at the rate of 4% per annum above the base lending rate of Lloyds Bank Plc from time to time in force unless otherwise specified. (ii) We shall have the right to suspend and/or cancel any further deliveries under the particular contract or any other contract or accepted order until payment is made in full and no time or indulgence granted by us to the Customer shall prejudice any right or remedy which we may have. (c) The Customer will pay all amounts due in full, without any deduction set-off or counter-claim.

INSOLVENCY

9. If in our opinion the Customer is likely to go into bankruptcy, receivership, administration or liquidation or makes default in or commits a breach of any contract with us we may forthwith on written notice to the Customer terminate any contract to which these Conditions relate ("Contract") without incurring liability to the Customer or without prejudice to our rights which may have accrued up to the date of termination.

FORCE MAJEURE

10. Neither we nor the Customer shall be deemed to be in breach of these Conditions or otherwise liable to the other for any delay in performance or non-performance of any of our obligations under these Conditions to the extent that the delay or non-performance is due to any event of national emergency, war, prohibitive governmental regulations, strike, lock-out or other industrial action or any other cause beyond the Customer's or our reasonable control.

RISK AND DELIVERY

11. (a) Wherever possible Products ordered out of stock before 12.00 noon on any business day will be despatched on that day. (b) Dates for delivery are estimates only given in good faith and as accurately as possible but are not guaranteed and we cannot accept responsibility for any failure to deliver or late delivery (c) Risk in the Products will pass on delivery to the Customer.

WARRANTIES AND LIABILITY

12. (a) We warrant all Products which have been manufactured by us against defects in design, materials and workmanship. Our obligation under this warranty shall be, at our option, to repair any manufacturing or component defect at our premises or to replace free of charge or refund the cost of any Products (or Product parts) which are shown to our satisfaction to have been defective under normal and proper use in accordance with the published specification. Notice of all defects (together with satisfactory proof of the defect) must be given to us immediately after discovery. We will only be liable for claims received within one year of the date of delivery. The Customer shall return all defective Products to us at the Customer's expense if required to do so by us.
(b) Our liability in respect of any goods not manufactured by us, but supplied by us shall be to give the Customer the benefit of any manufacturer's guarantee or other rights (if any) which are available to us against the manufacturer or its own supplier of such goods or materials.
(c) We shall be entitled to require the Customer by notice in writing to cease immediately the operation of any of the Products in respect of which any defect has been notified to us and if the Customer fails to comply with this requirement we shall be under no liability to the Customer either under the warranty in Paragraph 12 (a) or otherwise in relation to the Products. Where for any reason no such notice has been given by the Customer we shall not be liable for any damages or losses whatsoever suffered by the Customer to the extent that it is caused by the continued operation of the Products after a defect became apparent to the Customer.
(d) Subject to Paragraph 12 (g) the warranties contained in these Conditions are given in lieu of and replace and exclude all and every condition, warranty or representation whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise in respect of the quality or fitness for purpose, merchantability, description of the Products or otherwise and except, as provided in Paragraphs 12 (a) and (b) we shall be under no liability for any loss or damage resulting from any act or default on our part whether negligent or otherwise.
(e) Our liability under this Paragraph 12 shall be limited to the value of the Products supplied under the order to which any claim relates or the amount received by us in relation to the Products under any product liability insurance currently held by us (whichever is the greater).
(f) We will have no liability for any indirect or consequential losses or expenses suffered by the Customer including (but not limited to) loss of anticipated profits, goodwill, business contracts or losses resulting from third party claims.
(g) Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability for death or personal injury resulting from our negligence or the negligence of our employees, agents or sub-contractors or restricting any of our legal obligations arising under Section 12 of the Sale of Goods Act 1979 or under the Consumer Protection Act 1987.
(h) The Customer recognises that the limitation of liability contained in this Paragraph 12 is reasonable in that the prices quoted by us are dependent upon such limitation being incorporated in the Contract.

PERFORMANCE AND DRAWINGS ETC

13. All particulars given by us relating to technical performance dimensions capacity output consumption and weight of any Products and all illustrations descriptions specifications and drawings are given as accurately as possible but are approximate only and all such material contained in brochures, catalogues, price lists, and other advertising matter is intended merely to present a general idea of the Products which they describe. None of such material shall form part of the Contract and the Customer acknowledges that Products may vary slightly.

MODIFICATIONS

14. Every effort is made to ensure that the latest specification and design are available and we reserve the right to incorporate changes in design construction composition materials arrangement or equipment as we shall think fit without notifying the Customer and to supply Products which may not be in strict accordance with the agreed specification.

COPYRIGHT

15. We shall retain the exclusive property and reserve the copyright in all documents supplied or produced to the Customer in connection with any contract or tender and it shall be a condition of such supply or production that the contents of such documents or any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without our prior written consent. All communications in connection with any Contract or intended Contract shall be regarded as strictly confidential between us and shall not be divulged to any other person firm or company without our prior written consent.

THIRD PARTY CLAIMS

16. The Customer agrees to indemnify us against all demands claims damages charges liabilities costs and expenses which may be incurred or sustained by us by reason of or arising directly or indirectly out of any third party patent, copyright or other claim or right in respect of any Products manufactured or services supplied in accordance with any specification design information equipment or instruction given by or on behalf of the Customer

DESIGN RIGHTS

17. The property in the design of the Products covered by the Contract shall, subject to any existing rights of any third party (other than the Customer) in any design or invention incorporated or used in the design of the Products, remain exclusively our property. The Customer hereby assigns to us the design right in any design which may be commissioned by the Customer and neither the Customer nor any agent contractor or other person authorised by the Customer shall at any time make use of the design of the Products or any part of it.

NON ASSIGNABILITY

18. The Contract is between us and the Customer as principals and is not assignable without our consent.

LAW

19. The Contract shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Contract to the non-exclusive jurisdiction of the English Courts.

NOTICES

20. Any notice required to be given hereunder shall be sent to the address of the recipient given on the order. A notice shall be deemed to have been served if by hand when delivered, if by facsimile, when sent and if by first class post 48 hours after posting.

GENERAL

21. (a) The headings are for reference purposes only and do not limit or otherwise affect the interpretation of these Conditions. (b) Each of the paragraphs and sub-paragraphs of these Conditions shall be construed as separate and severable. (c) Our rights will not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.