

Terms & Conditions of Sale

1. The Contract

- 1.1 Every Contract for the sale of goods by SM GROUP (Europe) Ltd ('the Seller') to its customer ('the Buyer') will be governed by these Conditions except to the extent that they are varied in writing by a director of the Seller. No order will be subject to other provisions and the Seller will not be deemed to accept other provisions or to vary these Conditions by not objecting to provisions contained in any communication from the Buyer. Use by the Buyer of stationery which includes its standard terms of purchase is acknowledged by the Buyer as being a matter of administrative convenience to it and is not intended to alter the legal effect of these Conditions.
- 1.2 The Buyer acknowledges that it has not relied on any representation made by or on behalf of the Seller which is not contained in these Conditions. Information about or samples of the goods are for general guidance only and do not form part of the Contract. The Buyer accepts that none of the Seller's or any manufacturer's catalogues, brochures, advertisements, drawings or other data form part of the Contract.
- 1.3 Unless the Seller has expressly stated in writing to the contrary, tenders and quotations by the Seller are not binding and only indicate, as at their date, the current price of the goods. The Contract price will be the price ruling at the date of the Buyer's order but thereafter the Seller may notify the Buyer of such price variation as will reflect movement in the manufacturer's prices since the date of tender or quotation.
- 1.4 A typographical, clerical or arithmetical error in a document relating to the Contract may be corrected by the Seller without liability.
- 1.5 The price does not include value added tax which will be charged as an extra.

2. Limitation of liability

- 2.1 Nothing in the Contract excludes or limits the Seller's liability for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- 2.2 Subject to paragraph 2.1 above (i) all warranties, conditions and other terms implied by common law or statute are, to the fullest extent permitted by law, excluded from the Contract and (ii) the Seller will not be liable to the Buyer for any indirect or consequential loss (whether for loss of profit, loss of business, depletion of goodwill or otherwise), damage, cost, expense or other claim for indirect or consequential compensation whatsoever arising out of or in connection with the Contract.
- 2.3 The Buyer will be deemed to have satisfied itself, from its own investigations prior to ordering the goods, that the goods have the functional capability required by the Buyer. The Seller warrants that upon delivery the goods will be reasonably fit for any particular purpose which the Seller has confirmed in writing to the Buyer. No other representation about the goods shall have effect unless made in writing by a director of the Seller.
- 2.4 We do not supply goods on approval and goods found unsuitable should not be returned until conformation has been received that they can be accepted. Items normally carried in stock will usually be accepted provided that they are returned properly packed in new condition, but a minimum 10% handling charge is normally made on returns. Items listed but not normally stocked cannot be returned or credited.

3. Payment

- 3.1 Payment must be made by the Buyer in full strictly not later than the last day of the calendar month following the month of delivery, time being of the essence of the Contract for this purpose.
- 3.2 If any amount is overdue for payment by the Buyer, all invoices for goods already supplied by the Seller under all contracts will thereupon be due for immediate payment and the Seller will be entitled without prejudice to its other remedies (i) to charge interest on overdue amounts from the due date for payment until payment is made (whether before or after any court judgement) at 4% (compounded monthly) over the then base lending rate of HSBC Bank plc, payable not as a penalty but representing the loss to the Seller occasioned by non-timeous payment and (ii) to suspend delivery to the Buyer of goods under this or any other Contract.
- 3.3 Where deliveries of goods are made to the Buyer by the Seller on a continuing basis, each instalment or consignment will be invoiced as delivered and each invoice will be treated as a separate account, payable accordingly.
- 3.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the goods but full credit will be given to the Buyer if these are returned, undamaged, to the Seller before the due date for payment of the goods.

4. Delivery

- 4.1 The Seller will not be liable for any loss (including loss of profits), damage, cost, expense or other claim caused directly or indirectly by any delay in delivery of the goods. Any date specified by the Seller for delivery is only an estimate. Time for delivery will not be made of the essence of the Contract by notice but if delay in delivery exceeds 30 days after the estimated delivery date the Buyer will be entitled (as its only remedy) to terminate or rescind the Contract without liability to, or claim against, the Seller.
- 4.2 Delivery will be deemed to have been made when the goods are delivered to the address specified by the Buyer. Even if the Buyer does not accept delivery (i) the goods will be deemed to have been delivered, (ii) risk in the goods will pass to the Buyer and (iii) the Seller will be entitled to charge the Buyer for storage and insurance costs.
- 4.3 The Buyer will ensure safe unloading of the goods and will indemnify the Seller (except to the extent of any negligence by the Seller or its nominated carrier) against loss or injury arising from delivery of and/or unloading the goods. At the delivery address the Seller will not be required to transport the goods to any particular part of the premises and will deliver the goods to the nearest handstanding area to the public highway.
- 4.4 The cost of carriage and delivery will not be included in the price. If the Buyer requires special carriage and/or delivery arrangements, an additional charge will be made by the Seller.

- 4.5 Where the Buyer believes there is any damage, defect or shortage in delivered goods, the Buyer will notify the Seller strictly within seven days after the date of delivery. If the Seller is satisfied that there is such damage, defect or shortage, it may at its discretion replace or repair the goods in a reasonable time, or credit the Buyer with their price. The Buyer will, if so requested by the Seller, return goods which it believes are damaged or defective. Where the Seller is satisfied that delivered goods are damaged or defective the Buyer will not be entitled to refuse either to take delivery of or to pay for other goods delivered by the Seller.
- 4.6 If the Seller opts to replace damaged or defective goods where legal title to the goods has already passed to the Buyer, legal title to any goods so replaced will revert to the Seller.

5. Risk and legal title

- 5.1 Risk in the goods will pass to the Buyer upon delivery. Notwithstanding delivery of the goods and the passing of risk to the Buyer, legal title to the goods will not pass to the Buyer until the Seller has received (i) full payment for the goods and (ii) full payment of any other sums which are (or which, before full payment for the goods is made, become) due to the Seller from the Buyer on any account whatsoever, whether or not related to the goods supplied under this Contract.
- 5.2 Pending the passing of legal title to the Buyer, the Buyer will (i) store the goods safely, in accordance with any instructions of the Seller, in compliance with all relevant statutory regulations and so as to maintain the goods in the same condition as when delivered and (ii) ensure that no serial numbers or identification marks applied to the goods or their packaging are removed, erased or obscured.

6. Events of Default

- 6.1 An 'Event of Default' arises if the Buyer (i) does not make full payment for the goods in accordance with paragraph 3.1 above or (ii) fails to implement any of its obligations under the Contract or (iii) makes any arrangement with its creditors, becomes bankrupt, becomes subject to an administration order, has a receiver or administrative receiver appointed over any of its property, or goes into liquidation or (iv) ceases or appears to the Seller to have ceased to carry on its business in the ordinary course or (v) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 6.2 At any time after an Event of Default occurs, the Seller will be entitled with immediate effect (i) to rescind the Contract and/or (ii) to suspend any further deliveries, and/or (iii) to withdraw any power of the Buyer to deal with the goods in any way and/or (iv) to recover possession of any goods to which the Seller still has legal title, for which purpose the Buyer will be deemed to have given the Seller and its agents an irrevocable licence to enter any premises where the goods are situated, and will co-operate fully with the Seller in order to facilitate the identification and recovery of the goods.

7. Force Majeure

The Seller will be entitled, without liability to the Buyer, to defer delivery of the goods or to cancel the Contract if the Seller is delayed in or prevented from implementing its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental or local authority action, war, national emergency, riot, civil commotion, malicious damage, fire, explosion, lock-out, strike or other labour dispute (whether or not relating to either party's workforce), flood or other meteorological condition, restraint or delay affecting carriers, or delay in obtaining or inability to obtain supplies, provided that, if the event in question continues for a period of more than 120 days, either the Seller or the Buyer will be entitled (as its sole remedy) to give written notice of termination of the Contract to the other.

8. Data Protection

The Seller will collect contact details and other information about the Buyer but (i) will only use such data in implementing the Contract and in subsequent marketing and (ii) will not disclose such data to third parties outwith the Seller's group of companies. The Seller may search with a credit reference agency in respect of the Buyer and its directors/partners.

9. General

- 9.1 Except to the extent that the Contract otherwise expressly provides, the rights and remedies provided for in the Contract are not exclusive of any other rights and remedies provided by law.
- 9.2 If any provision of the Contract is held by any court of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, such provision will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable such that the remainder of such provision and the other terms and conditions of the Contract will continue in full force and effect.
- 9.3 Failure or delay by the Seller in enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. A waiver by the Seller of any breach or default under any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will not affect the other terms of the Contract.
- 9.4 The Buyer will not assign the Contract or any part of it without the Seller's prior written consent. The Seller may assign the Contract or any part of it to any person, firm or company. Nothing in the Contract except a permitted assignment confers or purports to confer on any third party any benefit or the right to enforce any provision of the Contract.
- 9.6 The Buyer will make all payments due under the Contract without deduction by way of set-off, counterclaim or otherwise, except to the extent that any valid court order requires a sum to be paid by the Seller to the Buyer.
- 9.7 The headings above the paragraphs in these Conditions do not affect their interpretation. The validity and construction of the Contract will be governed by English law and the English courts will have non-exclusive jurisdiction in respect of all such matters.