

APEX

International UK Ltd

Terms and Conditions of Sale

Definitions

In these conditions 'the Company' shall mean APEX International UK Ltd. The Purchaser shall mean the person, firm or company to whom any quotation is addressed or with whom any contract is made and 'the goods' shall mean the goods (including any instalment of the goods or any parts of them) and/or services agreed to be sold by the Company to the Purchaser together with any packing or assembly carried out on the goods.

1) Quotation and Acceptance

- (a) All quotations are given and all orders are accepted on these terms which shall apply to the exclusion of and shall override any other terms stipulated or referred to by the Purchaser whether in its order or any other document, or in any negotiations or communications or course of dealing established between the Company and the Purchaser;
- (b) No modification or amendment of these terms or addition thereto shall be effective unless made in writing and signed by a Director of the Company;
- (c) The Company employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing. In entering into the contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed;
- (d) Any advice or recommendations given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed;
- (e) All quotations are given and all orders are accepted based upon the standard specifications of goods adopted by the Company, unless expressly identified to the contrary on the order completed by the Purchaser, which such order has been duly accepted by the Company;
- (f) The Company reserves the right to refuse any order or quotation;
- (g) No order submitted by the Purchaser shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative;
- (h) The Purchaser shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods with sufficient time to enable the Company to perform the contract in accordance with its terms;
- (i) All drawings accompanying the Company's quotation or contained in its catalogues must be regarded as approximate representations and are given for information purposes only and are not binding in details unless stated in the Company's quotation or contract;
- (j) Where a representative of the Company completes an order form on behalf of the Purchaser, the Purchaser shall be solely responsible for ensuring that all information recorded or detailed is correct, accurate and completely consistent with the purchase requirements of the Purchaser. The Company accepts no liability for any errors or omissions in the completion of the order howsoever caused.

2) Description of and statements as to Goods

- (a) Save where the goods are stated to be sold as complying with a recognised trade or industry standard, all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's catalogues, brochures, price lists, quotations and publicity materials are approximate only and the Company shall not be liable for their accuracy unless they are expressly incorporated into the contract in writing;
- (b) These terms represent the entire agreement between the Company and the Purchaser relating to the goods and such terms supersede and the Purchaser shall not place any reliance upon any statements, recommendations and advice whether oral or in writing given (whether before or after the acceptance by the Company of the Purchaser's order) by the Company, its servants or agents as to any matter relating to the goods save where such statement, recommendations or advices given in writing and signed by a Director of the Company in response to a specific written request from the Purchaser before or at the time of the Company's acceptance of the order;
- (c) Any typographical, clerical or other error or omission in any sales literature, quotation, price list acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company;
- (d) The Company reserves the right to make any changes in the specification of the goods which are required to conform with any applicable safety or statutory requirement or, where the goods are to be supplied to the Company's specification, which do not materially affect their quality or performance;
- (e) Where glass, or any other item which may be considered as relevant to the order is not procured from the Company by the Purchaser, any information or specification or size which is given by the Company in relevance to, whether orally or in writing, is given to the Purchaser entirely without obligation or liability.
- (f) Where the purchaser has not provided appropriate specifications, detail, and/or final measurements and as a result it is necessary for the company to attend the purchaser's installation address to conduct a site assessment and final measurement, the costs of which will be in addition to the prices quoted and will be in accordance with section 3) c) below

3) Prices

- (a) Prices quoted by the Company are those in effect at the date of the quotation, and are based upon the purchaser providing all appropriate information necessary, including all relevant specifications required for the company to manufacture the goods. All prices quoted are valid for 30 days only, after which time the Company reserves the right to alter the price or quotation without giving notice to the Purchaser;
- (b) Unless otherwise agreed in writing the Company reserves the right to increase prices when it accepts the Purchaser's order so as to reflect one or more of the following:
 - (i) Any variation that may have occurred in the costs of labour, materials, suppliers overheads or transport;
 - (ii) Any change in duty, tax, surcharge or levy of any kind whatsoever effect the sale price of the goods;
 - (iii) Any costs to the Company resulting from delay by the Purchaser in giving to the Company information sufficient to enable it to supply the goods or provide the services, or resulting from any alteration made at the request of the Purchaser in the specification of the goods or their method of manufacture or supply, or in the place to which they are to be delivered or shipped, or any change in delivery or collection dates requested by the Purchaser;
 - (iv) Any extra costs to the Company resulting in the goods being carried at the request of the Purchaser by modes of transport more expensive than the Company's normal form of transport;
- (c) Unless otherwise agreed in writing the company reserves the right to charge the purchaser for any site assessment and measurement service.
 - (i) These costs will be in addition to any prices quoted and/or acknowledged for the supply of the goods.
 - (ii) The costs will be based upon the following rates, calculated and based upon return travel from the company address to the purchaser's site address:
 - Mileage - £0-60 per mile
 - Travel Time £45 per hour
 - Time on site £65 per hour
 - (iii) The Purchaser must provide assistance to the Company or its agent at the point of site assessment and measurement.
 - (iv) Where the company attends the purchaser's site address at a previously notified date, but is unable to conduct the site assessment and measurement after all reasonable endeavours, due to the purchaser having failed to properly prepare the site for the assessment, then the company reserves the right to charge the purchaser a failed site assessment charge, equivalent to the rates as in section 3) (ii) and a further site re-assessment charge will be levied by the Company.
- (d) All prices are exclusive of any applicable value added tax, which the Purchaser shall be additionally liable to pay to the Company.

4) Payment

- (a) Unless otherwise agreed in writing, the price of the goods will be due and payable at the date and point of order of the goods by the purchaser.
- (b) Where goods are delivered outside the United Kingdom, payment is by irrevocable letter of credit confirmed by a major UK bank or by such other method as the Company may specify, payment will (unless otherwise agreed in writing) be made in sterling;
- (c) The Company shall be entitled to charge interest on any part of the price which is not paid in accordance with clause (a) at the rate per annum of 3% above the base rate of LloydsTSB Bank Plc. from time to time; (b) and where a cheque is issued by the Purchaser by way of payment for the goods and this cheque is subsequently not honoured by the Bank upon which it is drawn for whatever reason, the Company shall be entitled to charge the Purchaser an administration fee of £35-00 per dishonoured cheque payment.
- (d) Appropriate any payment made by the Purchaser to such of the goods (or the goods supplied under any contract between the Purchaser and the Company) as the Company may think fit (notwithstanding and purported appropriation by the Purchaser);
- (e) Time of payment is of the essence and if the Purchaser defaults in punctual payment of the price the Company shall be entitled to terminate the contract and recover the goods at the Purchaser's expense without prejudice to any further rights which the Company may have;
- (f) Any default in payment of an invoice or an instalment payable on an invoice on the due date shall render the entire balance outstanding on all invoices from the Company to the Purchaser immediately payable in full without demand being made not withstanding any contrary provisions as to terms of payment in any one or all invoices;
- (g) If the Purchaser fails to give all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities for forwarding the goods or is unable to accept delivery of the goods at the time where the goods are due and ready for despatch or delivery or shall otherwise cause or request delay, the Purchaser shall pay to the Company all costs and expenses, including storage and insurance charges incurred or arising from such delay during which, at the Company's absolute discretion if its storage facilities permit, the goods will be stored at the Purchaser's sole risk. This provision shall be in addition to and not in substitution for any other payment or damages for which the Purchaser may be liable in respect of his failure to take delivery at the appropriate date;
- (h) The Purchaser shall not be entitled to make any deduction from the price of goods which have delivered to the Purchaser in respect of any setoff or counterclaim unless both the validity and the amount thereof have been expressly admitted in writing by the Company and such admission is signed by a Director of the Company;
- (i) In the absence of any specific appropriation by the Purchaser, the Company shall have the right to appropriate any payment made by the Purchaser towards the satisfaction of any invoice outstanding from time to time as the Company shall in its absolute discretion think fit.

5) Delivery

- (a) Any time or date stated for delivery or collection is given and is intended as an estimate only. Time for delivery shall not be of the essence of the contract and the Company shall not be liable for any loss or damage whatsoever resulting from any delay in delivery or collection howsoever arising;
- (b) Unless otherwise stated in writing delivery or collection shall be deemed to take place upon the occurrence of the first in time of the following, namely:
 - (i) the physical delivery of the goods to the Purchaser at the company's work;
 - (ii) the physical delivery of the goods to the Purchaser's carrier or agent of the purpose of transmission to the Purchaser or his nominee;
 - (iii) the physical delivery of the goods to the Purchaser's place of business or such other place as the Purchaser may direct by the Company, its carrier or agent, the Purchaser being responsible for unloading;
 - (iv) the physical collection of the goods by the Purchaser from the Company's place of business, carrier or agent, or such other place as the Company may direct the Purchaser;
- (c) Signature of the Company's delivery note by any employee, representative or agent of the Purchaser shall be conclusive proof of delivery;
- (d) Where the contract provides for delivery by the Company, its carrier or agent:

- (i) Any claims for non delivery must be made in writing to the Company within 2 working days or receipt of invoice or advice note which ever is the earlier;
- (ii) Any claims in respect of goods damaged in transit or shortages in delivery must be made in writing to the Company within 48 hours of delivery: shortages in delivery shall not give rise to a right to reject the goods to be delivered;
- (e) The Purchaser must provide assistance to the Company, its carrier or agent in the off-loading of the goods at the point of delivery. Where no such assistance is provided by the Purchaser, all goods will be returned to the Company's factory and a further re-delivery charge will be levied by the Company;
- (f) The Company shall be entitled to make partial deliveries or deliveries by instalments and all the provisions of these terms shall apply to such deliveries;
- (g) The Company shall endeavour to the best of its ability to deliver the total requirements of goods, but reserve the right to fulfil the order in available goods at the same price.
- (h) In any event that the Company, its carrier or agent, endeavour to make delivery of goods to the Purchaser's place of business or such other place as the Purchaser may direct the Company, but is unable to effect the delivery due to a breach of the Purchaser in any of these conditions, or if delivery cannot be made due to the nature of the premises, because there is insufficient access or for any reason that is not within the company's reasonable control including the absence of the purchaser at the time of delivery, then the Purchaser will be liable to pay for an additional re-delivery charge, or non-delivery surcharge which may be incurred by the Company in any event howsoever caused.
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- 6) Property and Risk**
- (a) Risk in the goods shall pass to the Purchaser at the time of which delivery or collection takes place, in accordance with clause 5 above and the Purchaser shall be solely responsible for insuring the goods thereafter;
- (b) The Company shall retain ownership of and title to the goods delivered or collected until full payment has been made in respect of all such goods. Until such time the goods shall be:
- (i) Stored separately from other goods in the possession of the Purchaser;
- (ii) Marked or otherwise rendered identifiable as being the property of the Company;
- (iii) Held by the Purchaser as bailee of the Company;
- (iv) Held by the Purchaser free from any charge, lien or other encumbrance;
- (c) Provided the Company has not requested their return and notwithstanding that payment in full has not been made for all of the goods delivered or collected, the Purchaser as principle and not as agent for the Company shall be entitled to use the goods or offer for sale and sell them in the ordinary course of his business;
- (d) Where the Purchaser sells the goods prior to paying for them in full:
- (i) The Company shall be legally and beneficially entitled to the proceeds of sale;
- (ii) The Purchaser shall hold the proceeds of sale on trust for the Company and shall not mingle them with any other monies and shall not pay them into an overdrawn bank account;
- (iii) He shall deposit the proceeds of sale in a separate bank account, the location and number of which he has previously notified to the Company, and he shall not be entitled to use or deal with the proceeds of sale until payment in full for the goods has been made to the Company;
- (e) The Company shall have the right at any time by its servants or agents to enter the Purchasers premises where the goods are stored or are thought by the Company to be stored, so as to:
- (i) Retake possession of the goods where the Company has requested their return and the Purchaser has not immediately complied with the request, such retaking or return to be without prejudice to any other rights the Company may have arising there from;
- (ii) Inspect the storage of the companies goods which have not been paid for in full;
- (iii) Investigate and ascertain whether all these terms are being complied with.
- 7) Guarantee and Liability**
- (a) The Company guarantees all goods which have been manufactured by the Company against any defect of work or materials which can be proven to the Company's satisfaction to have been caused before delivery provide that:
- (i) The goods are used for their normal purpose;
- (ii) Full details of any such defect are notified to the Company within 7 days of its first appearance and;
- (iii) The goods in which the defect arises are returned at the Purchasers expense to the Company;
- (b) The guarantee shall be for a period of 12 months from the date of delivery in accordance with clause 4 above and the liability of the Company shall be limited at its option either to supplying replacement goods, which will be supplied subject to these terms, or refunding the price of the goods;
- (c) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company's approval;
- (d) The Company gives no guarantee in respect of goods not manufactured by it but shall use all reasonable endeavours to procure for the Purchaser or assign to the Purchaser the benefit of any guarantee obtained by it from the manufacturer or supplier thereof; However the Company shall not require to commence litigation against such manufacturer or supplier or to incur any expense in connection with any such claim by the Purchaser;
- (e) The above guarantee is given in lieu of and to the exclusion of all other warranties, conditions, representations and undertakings express or implied by statute or otherwise in respect of the quality of fitness for purpose of the goods or as to their condition or performance or as to any other matter except where such warranty or condition is implied by statute and, by reason of a statutory provision cannot be excluded;
- (f) Save as provided herein and save in any case where death or personal injury has been caused by the Company's negligence or any cause where the Company is liable for a defect in the goods pursuant to part 1 of the Consumer Protection Act 1987 or any statutory replacement thereof, the Company shall be under no liability whatsoever to the Purchaser of any loss or damage whether direct, indirect or consequential arising out of any defect in, failure of, unsuitability for purpose, shortage, loss or damage of the goods or any part thereof whether the same be due to any act, omission, breach of contract, negligence or wilful default in design, workmanship or materials or any other cause. The Company's liability (if any) will be limited to replacing or (at the Company's option) repairing or giving credit for such goods or any part thereof;
- (g) The Company shall not be liable for any loss or damage howsoever caused which may be occasioned by reason of the goods supplied not conforming to the building regulations or any other statutory regulations, nor for any liability under the Health and Safety At Work Act 1974 to a use of the goods that has not previously been notified by the Purchaser and approved by the Company in writing before such use.
- 8) Indemnity as to Industrial Property Rights**
- (a) The Purchaser shall indemnify the Company against all loss, damages, costs and expenses suffered or incurred by the Company or to which the Company may become liable as a result of any work carried out in accordance with the Purchasers specification(s) which involves infringement or alleged infringement of a patent, registered design or other industrial property right;
- (b) If the Purchaser uses or sells the goods in such a manner as to infringe any such rights the Company shall, not be responsible for such infringement and the Purchaser agrees to indemnify the Company from and against all liability arising there from.
- 9) Termination**
- (a) The Company shall have the right forthwith to cancel the Purchasers order if any of the following events occur and subject to enforcement of the Company's rights to recover the goods and to receive payment of the price or damages, the contract shall be deemed to have terminated:
- (i) The Purchaser commits any breach of its obligations to the Company;
- (ii) Any distress or execution is levied upon any property of the Purchaser;
- (iii) The Purchaser makes or offers to make arrangement or composition with creditors or commits any act of bankruptcy or insolvency;
- (iv) Any resolution is passed or petition presented to wind up the Purchaser;
- (v) A receiver or administrator is appointed or any chargee takes possession of all or any part of the undertaking or assets of the Purchaser;
- (vi) The Purchaser stops payment or ceases or threatens to cease to carry on its business or to pay its debts as and when they fall due;
- (vii) Any remittance for payment of the whole or any part of the purchase price of the goods is dishonoured by the Purchasers bankers;
- (b) No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 10) Assignment**
- The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these terms apply to any other person without the Company's prior written consent. The Company reserves the right to sub-contract the performance of the contract or any part of it.
- 11) Force Majeure**
- If the Company is prevented or delayed (directly or indirectly) from making delivery of the goods or any part thereof or from otherwise performing the contract or any part thereof by reason of war, embargo, riot, strike, lockout, trade dispute, fire, breakdown of plant or machinery, inclement weather, interruption of transport, government action, delay in delivery to the Company of any goods or materials or by any cause whatsoever (whether or not of a like nature to the afore going) outside its control, it shall be under no liability whatsoever to the Purchaser and shall be entitled at its option either to cancel the contract or without any liability to extend the time or times of delivery by a period equivalent to that during which such delivery has been prevented.
- 12) General**
- (a) The contract of these terms shall be governed by English Law and the Purchaser shall submit to the sole jurisdiction of the English Courts;
- (b) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these conditions and the remainder of the provision in question shall not be affected thereby;
- (c) No waiver by the Company of any breach of the contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision;
- (d) Any notice shall be in writing and shall be deemed to have been given the day immediately following the day of posting when posted using first class inland letter mail or if hand delivered when actually delivered.