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A Division of Hillaldam Coburn Ltd

## **Terms and Conditions**

### **CONDITIONS OF SALE**

#### **1.0 GENERAL**

The Company's contract with the Customer will be subject to the following conditions which will prevail should they conflict with any others, and which can only be varied or waived by a director of the Company in writing.

1.1 In the event of conflict between these conditions and the Company's express written terms of contract then such express terms shall prevail.

1.2 Quotations, offers and tenders, which are subject in every case to written confirmation on receipt of order, are for the whole of the Goods and/or the Works for which the same are issued and the Company reserves the right to refuse acceptance of any order which constitutes only part of the Goods and/or the Works forming the subject of the quotation, offer or tender.

1.3 Unless otherwise stated quotations shall be available for acceptance for a maximum period of 90 days, from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.

1.4 The expression "the Goods" means all products, materials and equipment supplied in connection with the Works or otherwise under the Contract.

#### **2.0 DELIVERY**

2.1 Times for delivery of Goods and completion of the Works are given as accurately as possible, but are not guaranteed.. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery or completion time stated.

2.2 The date of delivery or completion shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may, if accepted by the Company, result in delay in delivery or completion.

2.3 Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods, delivered hereunder shall entitle the Company to treat the whole contract as repudiated by the Customer.

2.4 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery or completion lint shall be under no obligation to do so. Where delivery or completion is postponed otherwise than due to default by the Company, the Customer shall pay all costs and expenses including a reasonable charge for storage, insurance and transportation occasioned thereby and payment for the Goods and Works shall be made in accordance with these conditions.

2.5 Any packaging supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions of transit of usual duration.

2.6 The unloading of all Goods offered for delivery by the Company is the responsibility of the Customer and no charge will be accepted by the Company in respect thereof.

## **3.0 PRICES**

3.1 All orders are accepted on the condition that the Goods will be invoiced at the price ruling at the date of despatch unless otherwise agreed in writing.

3.2 Prices quoted exclude VAT which will (if appropriate) be added to the Company's invoice at the rate then prevailing.

3.3 In the event of any alteration being requested by the Customer and agreed by the Company in design or specification, the Company shall be entitled to make an adjustment of the Contract price corresponding to such alterations.

3.4 Unless stated otherwise in writing, prices do not include any costs, expenses and charges incurred by the Company in relation to or arising out of the execution in respect of the following, for which the Company shall be entitled to invoice additional charges against the Customer: -

3.4.1 Building work, cutting away and making good walls, floors and ceilings.

3.4.2 Electrical wiring, connection and installation work in respect of work executed or to be executed by third parties on behalf of the Customer.

3.4.3 Alterations made to work executed by third parties on behalf of the Customer to enable the Company's works to be completed.

## **4.0 TERMS OF PAYMENT**

4.1 Subject to satisfactory credit references and unless otherwise agreed by the Company in writing, terms are nett cash monthly account due and payable on the last day of the month following the month in which the Goods were despatched. If payment is in arrears, the Company may decline to make any further delivery until payment is made. Interim invoices may be rendered for materials supplied and work done at monthly or other previously agreed intervals.

4.2 No disputes arising under the contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.

4.3 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries of the Goods or operations on the Works and to charge interest on any amount outstanding at the rate of 3% per annum above the Base Rate of Barclays Bank plc in force at the time when payment was due compounded with three monthly rests.

## **5.0 VARIATIONS OR ADDITIONS TO WORKS**

5.1 If the Customer requires any variations or additions to the contract or its terms or specifications full details of the requirements shall be furnished to the Company in writing and the Company will submit a further quotation therefore.

## **6.0 CANCELLATION**

### **6.1 STANDARD PRODUCTS**

6.1.1 In the event of non acceptance of such Goods, carriage will be charged and a redelivery charge made at the same rate if redelivery is effected.

6.1.2 In the event of such Goods being returned in re-saleable condition a re-handling charge will be applied.

### **6.2 MADE TO ORDER PRODUCTS**

Where made to order products are involved cancellation will only be agreed to by the Company on condition that all costs and expenses Incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

## **7.0 STORAGE**

7.1 The Customer is responsible for the acceptance, unloading and adequate storage of materials on site. The Customer shall be responsible for protecting Goods from cement, mortar and other injurious materials as well as from the elements until practical completion is achieved.

## **8.0 WORKS ON SITE**

8.1 All persons provided by the Customer to assist the Company in the performance of the Works shall in all respects remain employees of the Customer.

8.2 The Customer shall insure to the full value thereof all Goods materials plant and equipment of the Company on site during the course of the Works against all loss or damage howsoever caused otherwise than by reason of the neglect or default of the Company, its employees, servants or agents.

## **9.0 SUB-CONTRACTORS**

9.1 The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under the contract in relation to the performance of the Works.

## **10.0 RISK AND TITLE**

10.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration of the Goods at the point of delivery named in the contract. 10.2 Title to the Goods or any relevant part thereof shall only pass to the Customer when the Customer has paid to the Company all sums due and payable by it.

10.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any site or premises of the Customer for the purpose either of satisfying itself that condition 10.4, below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer

10.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee of the Company on the terms of this contract. If the Company so requires the Customer shall store the Goods separately from other goods and shall ensure that they are marked or labelled as to be clearly identifiable as belonging to the Company.

## **11.0 SHORTAGES AND DEFECTS ON INSPECTION**

11.1 Any claim for product deficit or for damage in transit or for shortage in delivery must be made within seven days of the delivery of the Goods by giving separate notice in writing to the Company,

11.2 In the event of any loss of Goods, no claim will be entertained unless both the advice and claim be made to the Company within ten days of the date of consignment.

11.3 No attempt shall be made to install Goods damaged in transit or on site and the Company does not accept any liability for any expenses incurred in replacing any damaged items so used

## **12.0 GUARANTEE**

12.1 If the Company is satisfied that within twelve months of the date of completion of Works or delivery of Goods a defect or failure occurs under normal working conditions and which is notified to the Company in writing within fourteen days of its happening and is due to faulty workmanship in manufacture or installation, the Company will at its option repair such defects or replace the Goods. The Company's liability shall subject to Condition 13 be limited to the cost of replacement or repair of the materials and shall under no circumstances, accept any liability for consequential loss, or damage to the customer's or a third party's property or person.

## **13.0 LIABILITY**

13.1. Save where the Company is shown to have failed to exercise reasonable care in the performance of the contract and such failure results in death or personal injury the Company shall not be liable in respect of claims arising by reason of death or personal injury. Further, under 60 circumstance whatsoever shall the Company be liable for consequential loss (including removal or rectification work required in connection with the installation of repaired or substitute Goods or any work of repair, redecoration or restoration consequent upon rectification by the Company of any defects in the Works) loss of profit or damage to property.

## **14.0 PERMISSIONS**

14.1 All consents and approvals including, but without prejudice to the generality of the foregoing, those required from any Local Authority, freeholder, landlord, mortgagee, District Surveyor, City Engineer, Police and/or Fire, Water, Electricity and Gas Authority and consents and approvals required under any statute Order in Council, regulation, direction, bye-law or other lawful requirement or Instruction, shall be the sole responsibility of the Customer who shall bear full responsibility in respect of any failure to obtain the same unless the contract shall specifically provide otherwise, Acceptance of the tender, quotation or offer shall constitute a warranty and representation by the Customer that it has lawfully obtained every necessary consent, approval, licence, permit or authority that may be required in connection with the Works. The Company will provide on request in writing such information as to the Goods to be provided and Works to be performed by the Company as the Customer shall reasonably require for the purpose of obtaining such consents.

## **15.0 DATA AND TECHNICAL INFORMATION**

15.1 The information contained in the advertising, sales, and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and is provided for general guidance only.

15.2 The Company reserves the right to alter or vary a design or manufacture without notice.

15.3 All drawings, documents, confidential records, computer software and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away, loan, exhibit or sell any such drawings, documents, records, software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods and/or Works for which they are issued.

15.4 The Customer shall be solely responsible for ensuring that all drawings, advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's own advisers or consultants are accurate, correct and suitable.

15.5 Where the Company is required to submit drawings and/or specifications to the Customer for approval prior to the commencement of either performance of the Works or of manufacture of the Goods the Customer shall on the issue of such approval accept full responsibility for such drawings and/or specifications unless the Company specifically agrees in writing to accept responsibility.

15.6 The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings which arise due to the manufacture of Goods or the provision of the Works to the drawings and specifications of or approved by the Customer where such drawings and specifications shall be at fault or where it is alleged that they involve an infringement of any Patent, Registered Design, Design Right, Copyright or Design Copyright or other exclusive right.

## **16.0 INSOLVENCY**

16.1 If the Customer shall become bankrupt or, under the provisions of Section 123 of the Insolvency Act 1986, it is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all any part of its assets or undertaking, or In the case of an export order the Customer is subject to any equivalent of the above the Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any other right or remedy accrued to the Company.

## **17.0 CONSUMERS PROTECTION**

17.1 Nothing in these conditions shall affect the statutory rights of a Customer who, in relation to the Company, deals as a "Consumer" as defined in Section 12 of the Unfair Contract Terms Act 1977 or any amendment or modification thereof.

17.2 Nothing in these conditions shall affect the statutory rights of a Consumer as defined in the Consumer Protection Act 1987.

17.3 The Customer hereby acknowledges that it is under a duty to pass on to its customers (where appropriate) all instructions; information and warnings supplied to it by the Company with the Goods. 17.4 The Customer must satisfy itself that the Goods supplied by the Company are suitable for any product or application in, or for which they are to be used prior to incorporation or use.

## **18.0 EXPORT SALES**

18.1 These General Conditions of Trading apply in the case of contracts for the sale of Goods and performance of the Works for delivery outside the United Kingdom and the Channel Isles ("export sales") except as varied by this condition.

18.2 Commercial terms such as CIF and FOB shall have the meanings assigned to them by the current "Incoterms" Conditions published by the International Chamber of Commerce Paris.

18.3 Unless otherwise stated in writing all export quotations and sales are based on Ex United Kingdom Works Prices excluding carriage and packaging and the Company's responsibilities shall cease the moment the Goods leave the premises of the Company.

18.4 In the case of export sales:

18.4.1 The sole and exclusive warranty of the Company unless otherwise specifically agreed in writing is that Goods manufactured by the Company and sold to the Customer will at the time of shipment be constructed of sound materials and be of good workmanship.

18.4.2 The Company's sole obligation in the event of a breach of such warranty shall be to repair or replace at its option any product which is proved to have been defective at the time of shipment.

18.4.3 This Guarantee is intended solely for the benefit of the Customer. All claims hereunder must be made by the Customer and not by any other person firm or company who may have possession of the Goods,

18.5 The Customer shall be solely responsible for obtaining all import authorisations and shall indemnify the Company against all costs, claims and losses whatsoever arising by reason the Customer's failure to obtain all necessary authorisations.

18.6 Quotations in currency other than sterling may, unless otherwise agreed in writing, be subject to amendment in the event of fluctuation in the exchange rate prior to the date of invoice.

## **19.0 LEGAL**

19.1 In the case of Goods to be delivered to and services performed at addresses within the United Kingdom the contract shall be governed and interpreted exclusively according to the law of England and shall be subject to the jurisdiction of the English Courts only.

19.2 In the case of Goods to be delivered to and the Works to be performed at addresses outside the United Kingdom, the contract shall be governed and interpreted exclusively according to the law of England and shall be subject to the jurisdiction of the England Courts only, save to the extent that the Company may be required to obtain injunctive relief outside the jurisdiction.