

AUK DISTRIBUTION LTD STANDARD CONDITIONS OF SALE

1. INTERPRETATION

“GOODS” means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions.

“CONDITIONS” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“CONTRACT” means the contract for the purchase and sale of the Goods.

“WRITING” includes telex, facsimile transmission and comparable means of communication.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF SALE

The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted in writing by the Buyer, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

No variation to these Conditions shall be binding upon the Seller unless agreed in writing between the authorised representatives of the Buyer and the Seller.

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that he does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3. ORDERS AND SPECIFICATION

The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

No order which has been accepted by the Seller may be cancelled by the Buyer except with the Agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

4. PRICE OF GOODS

4.1 All prices quoted are valid for 60 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The price is exclusive of any applicable value added tax.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection.

5.2 The Buyer shall pay the price of the Goods (but without any other deduction by way of set-off, contra charge, abatement, counter-claim or otherwise) within 30 days of the date of Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence.

5.3 If the Buyer fails to make any payment on the due date than, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of Four per cent per annum above HSBC base rate from time to time compounding quarterly until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 For the avoidance of doubt payment shall mean the receipt of cleared funds in the bank count of the Seller.

6. DELIVERY

6.1 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.

6.2 Where the goods are to be delivered in instalments and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection: or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer For which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. WARRANTIES AND LIABILITIES

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specifications at the time of delivery and will be free from defects in material and workmanship for a period of Twelve months from delivery or any longer period agreed in writing.

8.2 The above warranty is given by the Seller subject to the following conditions.

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller 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 Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

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- 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.7 The Seller shall not be liable to the Buyer or be deemed to be breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.7.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.7.4 import or export regulations or embargoes;
- 8.7.5 strikes, lock-out or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.7.7 power failure or breakdown in machinery.
9. INDEMNITY
- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs, and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid the Buyer in settlement of the claim provided that:
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Buyer shall give all reasonable assistance for the purposes of any such proceeding or negotiations;
- 9.1.3 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim.
10. INSOLVENCY OF BUYERS
- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
11. EXPORT TERMS
- In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- Where the Goods are supplied for export from the United Kingdom, the provisions of the clause 11 shall (subject to any terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB at the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979 or any subsequent legislation or statutory re-enactment thereof.
- The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- Payment of all amounts due to the Seller shall be made by the irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a Bank in the United Kingdom acceptable to the Seller.
12. GENERAL
- Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party as its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- The Contract shall be governed by the laws of England and the courts of England and Wales shall have exclusive jurisdiction over any dispute arising out of or in connection with the Contract.