

from you to me ltd

Terms and Conditions

1. Definitions

In these conditions

- a) 'the seller' shall mean from you to me ltd and their employees, agents and assigns;
- b) 'the buyer' shall mean the person, firm or company with whom the contract is made;
- c) 'the contract' shall mean the contract between the buyer and seller for the sale and purchase of the goods;
- d) 'the goods' shall mean the goods and services (or any instalment or part of them) to be supplied pursuant to the terms of the contract;
- e) 'the sellers premises' shall mean the premises mentioned in the contract or if not so mentioned means the sellers premises situated at Hackless House, Murhill, Bath BA2 7FH

2. General

- a) In these conditions the headings are for reference only and words singular shall include the plural and vice versa and references to any gender shall include the other
- b) These conditions shall apply to the Contract to the exclusion of any other terms and conditions in or referred to in any order, letter, form or contract or other form of communication sent by the buyer to the seller and the provisions of these conditions shall prevail unless expressly varied in writing by the seller
- c) Any concession made or latitude allowed by the seller to the buyer shall not affect the strict rights of the seller under the contract
- d) If in any particular case any of these conditions shall be or shall be held to be invalid or shall not apply to the contract the other conditions shall continue in full force and effect

3. Intellectual Property Rights

- a) Unless otherwise agreed in writing and signed by the seller, the seller shall be the owner or all copyright, confidential information, design right and other so called intellectual property rights in all goods which it designs and makes
- b) The seller warrants and agrees that it shall not knowingly infringe the rights of any third party in any design used for preparation of the goods supplied
- c) The buyer shall indemnify the seller against all costs, claims, losses, expenses, and damages incurred by the seller or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of any confidential information, copyright, design right, trade mark or other intellectual property right occasioned by the importation, manufacture, sale or supply of goods which have been made to the specification or special requirement of the buyer

4. Estimates and Prices of Goods

- a) No estimate or order shall be binding on the seller unless and until it has been accepted by the seller
- b) Unless otherwise agreed in writing by the seller the price payable for the goods shall be the price detailed overleaf of this contract
- c) All prices are exclusive of VAT (value added tax) and VAT shall be charged by the seller and shall be payable by the buyer at the appropriate rate

5. Delivery of Goods

- a) All times, dates and periods quoted for delivery of the goods shall be given in good faith but without any responsibility on the seller's part unless the seller agrees in writing
- b) Time of the delivery shall not be the essence of the contract
- c) Unless otherwise agreed in writing, deliveries of goods shall be made between Monday to Friday
- d) No liability (whether in contract or for negligence or otherwise howsoever) for loss or damage to the goods occurring prior to delivery or for any claim that any item delivered pursuant to the contract is defective or is otherwise not in accordance with the contract (being a defect or loss, damage or non compliance which would not have been obvious on a reasonable inspection of the goods) or for non delivery will attach to the seller unless claims to that effect are notified in writing to the seller by the buyer within seven days of delivery for loss, damage, defect or non compliance with the contract
- e) In the event of a valid claim for defect, loss, damage or non delivery the seller undertakes at its option to either repair or replace the items concerned at its expense but shall not be under further or other liability in connection with such non-delivery, loss, damage or non compliance
- f) If the buyer shall fail to give notice in accordance with condition 5d) above the items delivered shall be deemed to be in all respects in accordance with the contract and without prejudice to earlier acceptance by the buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect, or non-compliance shall be thereafter wholly barred
- g) Where the goods are handed to a courier for carriage to the buyer the carrier shall be deemed an agent of the seller and not the buyer
- h) The buyer agrees that section 32(3) of the sale of goods act 1979 or any re-enactment thereof shall not apply to the goods sent by the seller
- i) Goods supplied in accordance with the contract cannot be returned without the prior written authority of the seller and duly authorised returns shall be sent to the sellers premises at the buyer's expense. Any such orders returned without the seller's prior written authority shall not be accepted.
- j) The seller shall have the right to supply the goods in instalments at such intervals as it may decide and any express provision as to instalments in the contract shall be in addition to and not in derogation of this right

6. Payment Terms

- a) Unless otherwise agreed in writing and signed by the seller all payments for goods must either be on a pro-forma basis or in the event of the seller agreeing to give credit, payment shall be due 30 days net from the date of the invoice, or forthwith upon the occurrence of any of the events referred to in condition 13 hereof
- b) The price of the goods shall be due in full to the seller in accordance with the terms of the contract and the buyer shall not be entitled to exercise any setoff, lien or any other similar right or claim
- c) The time of payment shall be of the essence of the contract
- d) Without prejudice to any other rights it may have, the seller is entitled to charge interest at a rate equal to the higher interest rate payable on court judgements or 4% above the base rate on overdue payments on the price of the goods from the date payment becomes due until it is received by the seller as well after as before any judgement obtained

7. Passing of Title and Risk

- a) The goods shall bear the buyer's risk as from delivery
- b) In spite of delivery having been made property in the goods shall not pass from the seller until the buyer shall have paid the price plus VAT in full and no other sums whatever shall be due from the buyer to the seller
- c) Until the property in the goods passes to the buyer in accordance with clause b) the buyer shall hold the goods and each of them on a fiduciary basis as bailee for the seller. The buyer shall store the goods (at no cost to the seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the seller's property
- d) Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money
- e) The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller
- f) Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause d) shall cease
- g) The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable
- h) The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable
- i) The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable

8. Consequential Loss

The seller shall not be liable for any costs claims damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to any profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis

9. Representation

No statement, descriptions, information, warranty, condition or recommendation contained in any brochure, catalogue, price list, advertisement or communication or made verbally by any of the seller's agents or employees shall be construed to enlarge vary or override in any way any of these conditions

10. Force Majeure

The seller shall be entitled to delay or cancel delivery or to reduce the amount of goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strike, lock outs, accidents, illness, war, fire, reduction or unavailability of materials or power at manufacturing plant, breakdown of plant machinery or shortage or unavailability of raw materials from usual sources of supply

11. Cancellation

Save as provided for in clause 10 or if the buyer enters insolvency, no contract may be cancelled or varied unless by agreement in writing signed by both parties and upon payment to the seller of such amount as may be necessary to indemnify the seller against all losses resulting from the said cancellation

12. Subcontracting

The seller reserves the right to assign the contract with the buyer or to subcontract the whole or part thereof to any person, firm or company