

Corrpro Companies Europe Limited Standard conditions of sale

1. Definitions

'The contract' shall mean the contract for the supply of goods incorporating these terms

'The buyer' shall mean the person or persons or firm or company seeking to purchase the goods from the seller

'The seller' shall mean Corrpro Companies Europe Limited

'The terms' shall mean the terms set out in this document, the contract and any attachments to those documents

2. General

(1) These Conditions (together with those details stated on the sales invoice) are the only conditions upon which the seller is prepared to deal with the buyer and they shall govern this contract to the entire exclusion of any other express or implied conditions. To the extent that there is any inconsistency between the conditions set out on the sales invoice and these standard conditions the former shall prevail.

(2) These conditions may only be modified by a variation expressed in writing (which shall include telexes) by the seller and no other action on the part of the seller (whether delivery of the goods or otherwise) shall be construed as an acceptance of any other conditions or of any modification hereto.

(3) These conditions (as modified in accordance with paragraph (2) and together with matters referred to on the face hereof) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.

(4) Any quotations in whatever form given to the buyer is subject to these conditions and does not constitute an offer to sell. All orders placed with the seller require the seller's acceptance before any contract arises.

(5) 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 it does not rely on any such representations which are not so confirmed

(6) Any advice or recommendation given by the seller or its employees or agents to the buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the seller is followed or acted upon entirely at the buyer's own risk, and accordingly the seller shall not be liable for any such advice or recommendation which is not so confirmed

(7) 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 other provisions of these conditions and the remainder of the provision in question shall not be affected.

(8) Any reference to 'Incoterms' in a contract shall mean 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.

3. Order and specifications

No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller's order acknowledgement.

The buyer shall be responsible to the seller for ensuring the accuracy of all of the information of any order (including any applicable specifications) 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.

The quantity, quality and description of and any specification for the goods shall be those set out in the order acknowledgement.

The seller reserves the right to make any changes in the specifications of the goods which are required to conform with any applicable 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

The price of the goods shall be the price set out on the order acknowledgement. All prices quoted are valid for 30 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.

The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the seller which is due to any factor beyond the control of the seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture).

The buyer shall pay the price in the manner specified in the contract and the prices quoted shall be ex-warehouse unless stated to the contrary in the contract.

Where the seller quotes a CIF price this shall not include import or other duties dues taxes and other costs chargeable in respect of the cargo at port of discharge and any increase in freight rates duties taxes or dues in the country of final destination of the goods subsequent to the date of the contract shall be for the buyer's account.

Where any sum owed by the buyer to the seller under this or any other contract (including but not limited to any interest) is overdue or if at any time the credit standing of the buyer has in the opinion of the seller been impaired for any reason the seller may withhold any deliveries of goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the seller or may in its discretion cancel the contract so far as it remains unperformed and without prejudice to any other rights the seller may have in respect thereof at the date of such suspension or cancellation as the case may be.

Prices quoted are applicable to the quantity specified and on the information provided by the buyer at the time of order. In the event of orders being placed for lesser quantities or if there is any change in specifications, delivery dates, or delay is caused by the buyer's instructions or lack of instructions the seller shall be entitled to adjust the price of the goods as ordered to take account of the variations.

5. Payment

Unless agreed to the contrary in writing by the seller all invoices are due for payment 30 days after the date of the invoice.

Late payments will incur interest at the rate of 8% per annum above the Bank of England base rate in force from time to time, for each day payment is not received from the due date until the date of payment after as well as before judgement.

Credit facilities may be withdrawn or reduced at any time at the seller's sole discretion.

In the case of short delivery the buyer will remain liable to pay the full invoice price of the goods delivered or available for delivery.

The buyer may not withhold payment of any invoice or other amount due to the seller by reason of any right of set off or counterclaim which the buyer may have or allege to have for any reason whatsoever.

The seller shall be entitled at all times to set off any debt or claim of whatever nature which the seller may have against the buyer against any sums due from the seller to the buyer.

6. Delivery

Delivery will be effected when the goods leave the seller's premises whether carried by the seller or an independent carrier or the premises of the seller's suppliers when the goods are delivered direct from suppliers.

Delivery dates are given in good faith but are estimates only.

Time for delivery shall not be of the essence of the contract.

For the avoidance of doubt and without detracting from any other provisions of these terms the seller shall not be liable for any damages whatsoever whether direct or indirect (including any liability to any third party) resulting from any delay in delivery of the goods or failure to deliver the goods in a reasonable time whether such delay or failure is caused by the seller's negligence or otherwise howsoever.

The seller reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment. The seller's failure to deliver any one or more instalments 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.

Unless otherwise agreed in writing the seller may make an additional charge for delivery if the seller incurs further costs or expense including (but not limited to) those caused by delivery of (i) less than a full load (ii) complying with the buyer's request for delivery outside the seller's normal delivery pattern or trading hours (iii) delivery by instalments

The buyer must provide necessary labour and equipment for unloading the goods. Unloading is to be completed with reasonable speed. If the seller's delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if the seller provides additional staff to unload goods then an additional charge will be made.

The buyer agrees to ensure the prompt discharge turn-around and re-despatch of all and any road transport vehicles or other forms of carriage which have been used for the carriage of any consignment of materials under this contract and to indemnify the seller, its officers, agents and employees against any loss or liability whatsoever arising or resulting from any delay in such discharge turn-round or re-despatch.

If the buyer fails to take delivery accept or collect the goods within the agreed time in its discretion the seller may make an additional charge, treat the contract as complete and invoice the buyer for the goods or treat the contract as repudiated and in any case recover the seller's losses from the buyer

If the goods are to be collected from the seller the buyer is solely responsible for the size weight and positioning of their load on the vehicle and shall indemnify the seller in respect of all costs claims losses or expenses the seller may incur as a resulting of the buyer collecting the goods including any resulting from the seller's negligence.

The buyer will indemnify the seller in respect of all costs claims losses or expenses the seller may incur as a result of delivery in accordance with the buyer's instructions. This indemnity will be reduced in proportion to the extent that such costs claims losses or expenses are due to the seller's negligence.

7. Risk and Title

Risk in the goods shall pass to the buyer when the goods are delivered

Until all sums due to the seller on any account whatsoever have been paid to the seller;

(1) All legal and equitable title to the goods shall remain with the seller and the seller shall be entitled to re-possess the goods if at any time in the opinion of the seller the credit standing of the buyer has been impaired, and the seller may and is hereby permitted by the buyer to enter any premises of the buyer for the purpose of so re-possessing the goods.

(2) Should the goods be converted in to a new product, whether or not such conversion involves the admixture of any other goods or thing whatsoever, the conversion shall be deemed to have been effected on behalf of the seller.

(3) Any proceeds for any disposal of the goods or of any such raw product by the buyer shall to the extent of any sums due to the seller be held on trust for the seller absolutely.

The seller shall be entitled at any time to recover any or all of the goods in the buyer's possession to which the seller has title and for that purpose the seller, its employees or agents may with such transport as is necessary enter upon any premises occupied by the buyer or to which the buyer has access and where the goods may be or are believed to be situated.

The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the seller, but if the buyer does so all monies owing by the buyer to the seller shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable.

8. Shipment and storage

(1) The date of despatch (or if an ex-warehouse contract the date of availability for collection) is the best estimate of such date but the seller reserves the right to alter the same without notice.

(2) The goods may be shipped in one or more parcels, and each shipment shall be treated as a separate contract to which the terms and conditions hereof shall apply: Provided that this condition shall be subject to and in no way derogate from the rights of the seller under Clause 13 hereof to suspend or terminate the whole contract in the circumstance mentioned.

(3) Without prejudice to any other rights the seller may have the seller reserves the right to put the goods or any portion thereof into storage at the buyer's risk and expense in the following cases:

(a) Where the goods are about to be despatched and the buyer notifies the seller that the buyer is unable or unwilling to receive the goods or for any reason will be unable to accept delivery of the goods when tendered.

(b) Where the seller is ready to despatch the goods but needs delivery instructions and such instructions have not been provided by or on behalf of the buyer or are inadequate or late.

(c) In an ex-warehouse contract where the buyer fails to collect the goods when they are ready for collection.

(d) In an FOB contract where the buyer fails to nominate a shipper to the seller.

(e) Where the seller suspends delivery of goods pursuant to Clause 4.

If any of the above conditions listed under (a), (b), (c) and (d) above are still in existence fourteen days from the delivery date the seller shall be entitled to make an additional charge, treat the contract as complete and invoice the buyer for the goods or treat the contract as repudiated and in any case recover any and all losses from the buyer.

(4) The buyer agrees to ensure the prompt discharge turn-around and re-despatch of all and any road transport vehicles or other forms of carriage which have been used for the carriage of any consignment of materials under this contract and to indemnify the seller, its officers, agents and employees against any loss or liability whatsoever arising or resulting from any delay in such discharge turn-round or re-despatch.

9. Inspection, acceptance and notification of claims

Immediately upon receipt of the goods the buyer shall examine the same to check that the quality and weight conform to this contract.

The buyer must advise the seller immediately by telephone and also in writing within three working days of delivery of the goods at the place of delivery of any claim for short delivery. Failure to notify in this manner will mean that the goods will be deemed to have been delivered in the quantities shown in the delivery documents.

Any use, conversion or disposal of the goods by the buyer shall be deemed to constitute approval and acceptance of them.

Any claim against the seller arising under this contract must be made in writing and delivered to the registered office of the seller within thirty days of delivery of goods to buyer.

10. Insurance

Where shipments under this contract are made CIF the insurance in the goods excludes insurance against the risk of war, strikes, riots and civil commotions which risks shall only be covered at buyer's request and cost.

In the event of loss of, or damage to, goods after shipment under this contract but prior to actual arrival at discharge port and payment therefore the buyer will make payment against the documents representing such goods in accordance with the Payment Clause and in the event of the carrying vessel being lost such payment shall be made immediately loss of the carrying vessel is established

11. Import licences

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 dues taxes or other costs on them.

The buyer shall indemnify the seller against any loss or expense to the seller arising from failure by the buyer to obtain in due time any import licence or permit or the like which may be required for the importation of the goods at destination or from the subsequent revocation or non-renewal of such permit.

12. Health and safety

The goods are sold on conditions that:

- (1) The buyer carries out such test and examinations of the goods as are reasonably practical to ensure that when used the goods are safe and without risk to health and comply with all local laws and regulation; and
- (2) The buyer shall, if so requested by the seller, enter into a written undertaking to take such steps as may be specified by the seller relating to such tests and examination.

13. Force Majeure

(1) The seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond its reasonable control including but not limited to Acts of God, war, riots, civil disturbance, requisitioning, fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, adverse climate conditions, pestilence or epidemics, governmental or parliamentary restrictions or regulations, non-availability or interruption or deviation in shipping or other transport, strikes, shortage of labor, lock-outs or trade disputes (whether involving its own employees or those of any other person), collapse of structures, cessation or interruption of operation of any plant or process, failure of supply of raw material or components or other operating requirement, breakdown of machinery. Should any such event occur the seller may suspend this contract without incurring any liability for loss or damage thereby occasioned and the duration of such period of suspension shall be added to any delivery date or period herein specified and the seller so affected by such cause shall give notice thereof to the buyer in writing as soon as reasonably practicable.

The seller shall be regarded as affected by such cause if such cause affects the producer of the goods and this occasions delay in the performance of the seller's obligations hereunder.

(2) Upon the seller giving notice as in (1) above, the seller shall be entitled to extend the delivery date for undelivered goods so affected until the cause of such notice ceases to affect the performance of the contract. Nothing contained in this paragraph shall release the buyer from its obligations to accept and pay for the goods already shipped or for which freight has already been engaged for shipment prior to the giving of such notice by the seller.

(3) To the extent that any such cause affects the production or shipment of materials to be supplied hereunder the quantity to be supplied hereunder may be reduced rateably by the proportionate loss in production or shipments.

(4) After termination of any such cause there shall be no obligation upon seller to make good to the buyer any quantities of goods which seller has been unable to supply

(5) Where the seller has the option to supply alternate goods and has duly declared that option in favor of certain goods and those goods are subsequently rendered unavailable by reason of force majeure, the buyer may not then require substitution of the alternative goods. The provisions of this clause shall apply to the goods in respect of which the declaration has been made without regard to the availability or otherwise of the alternative goods.

(6) In the event of the cause of suspension lasting more than thirty days the seller shall, upon written notice to the buyer, be entitled to treat the contract as terminated without liability to the buyer at the date of such notice. Termination shall be without prejudice to the rights and obligations of the parties up to and including the date of such notice and shall not affect the buyer's obligation to accept in due course the goods already priced

14. Warranties and liability

Subject to the conditions set out below the seller warrants that at the time of delivery the goods will correspond with their specification and will be free from defects in material and workmanship for a period of twelve months from the date of their delivery:

The seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the buyer.

All drawings, descriptions, illustrations, specifications, performance data, dimensions, weights and the like whether contained in any contract or made by way of representation will have been provided by the seller on the basis they are as accurate as reasonably possible but the seller does not warrant and no warranty shall be implied that the same are accurate.

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.

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.

The above warranty does not extend to parts, materials or equipment not manufactured by the seller, in respect of which the buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the seller.

Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other items implied by statute or common law are excluded to the fullest extent permitted by law.

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 seven working 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 (but no later than 30 days after the delivery date). 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.

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 make good, repair or 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 or to any other party.

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 (unless fraudulent), or any implied warranty, condition or other item, or any duty at common law, or under the express terms of the contract, for any loss (including without limitation consequential loss), costs, expenses, or other claims for compensations whatsoever (whether caused by the negligence of the seller, his 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, and the entire liability of the seller under or in connection with the contract shall not exceed the price of the goods (or part thereof).

No statement or affirmation by or on behalf of the seller by words or actions other than as set forth herein shall constitute a warranty and the buyer shall not be entitled to rely on any oral or written statement including those of any employee, agent or representative of Corpro as being part of the terms and conditions of the warranty or of doing business unless such statement is in writing and signed the Managing Director of the seller.

15. Governing law

This contract is governed by the laws of England and the English High Court of justice (to the jurisdiction of which the buyer hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes arising out of it.

16. Insolvency of buyer

This clause applies if:

(a) the buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the buyer; or
- (c) the buyer ceases, or threatens to cease, to carry on business; or
- (d) anything analogous to any of the foregoing under the laws of any jurisdiction occurs to the seller; or
- (e) 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

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.