

GENERAL CONDITIONS OF SALE

1. Definitions

In these Conditions the following expressions shall have the following meanings.

- 1.1 'the company' shall mean Architectural FX Limited and also where the context so permits any sub-contractor for the said company
- 1.2 'Goods' shall mean the article or thing or any of them described in the contract between the company and the buyer for the sale or supply of goods.
- 1.3 'the buyer' shall mean the person, firm or company with whom any contract to sell goods is made by the company whether directly or indirectly through an agent, factor, or representative who is acting for or instructed by any such person, firm or company or whose actions are subsequently to the contract ratified by the actual buyer.
- 1.4 'Companies premises' shall mean the premises mentioned in the company's quotation or other contractual document, or if not so mentioned shall mean the company's offices at 'The Studio, 2 Osborne Cottages Osborne Lane Warfield Bracknell Berkshire RG42 6EA

2. General

- 2.1 These conditions shall be deemed to be incorporated in all contracts of the company to sell Goods, and in the case of any inconsistency with any letter or quotation incorporating or referring to these conditions, or order, letter or form of contract sent by the buyer to the company or any other communication between the buyer and the company whatever may be their respective dates, the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on behalf of the company. Any concession made or latitude allowed by the company to the buyer shall not affect the strict rights of the company under the contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the contract, the other conditions shall continue in full force and effect.

3. Orders

- 3.1 Notwithstanding that the company may have given a detailed quotation, no order shall be binding on the company unless and until it has been acknowledged in writing by the company.
- 3.2 The company's catalogues, brochures, leaflets or correspondence are not binding as reasonable variations may be made without notice, and such goods as varied shall be accepted as complying with the contract.

4. Prices

- 4.1 The price payable for the goods shall unless otherwise stated by the company in writing and agreed on its behalf be the list price of the company current at the date of dispatch and in the case of an order for delivery by instalment shall be the list price of the company current at the date of dispatch of such instalment unless otherwise expressly stated to be firm for a period.
- 4.2 Unless otherwise expressly stated to be firm for a period the company's prices are subject to variation to take account of variations in wages, materials or other costs since the date of the order. The company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original contract price.
- 4.3 All prices are exclusive of Value Added Tax and this will be charged at the appropriate rate
- 4.4 Where prices are specified as being 'ex-works' the cost of delivery will be borne by the buyer. Such costs will be determined by the company as being reasonable even if they exceed a value which would have been incurred had the goods been delivered by a third party

5. Additional Costs

The buyer agrees to pay for any loss or extra cost incurred by the company through the buyers instructions or lack of instructions, or through failure or delay in taking delivery or through any act or default on the part of the buyer, its servants, agents or employees.

6. Patents

The buyer shall indemnify the company against all costs, claims and damages incurred or threatened arising out of any alleged infringement of patents, trademarks or copyright occasioned by the manufacture or sale of the goods made to the specification or special requirements of the buyer.

7. Terms of Payment

- 7.1 In respect of a credit account being approved; Payment shall be in accordance with the standard terms of payment of the company in the United Kingdom applicable from time to time and will unless otherwise stated be due in cash not later than 30 days after the invoice date.
- 7.2 If the goods are delivered in instalments whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the part of the company.
- 7.3 If upon the terms applicable to any order price shall be payable by instalments, or if the buyer has agreed to take specified quantities of goods at specified times, a default by the buyer of the payment of any due instalment, or the failure to give delivery instructions in respect of any quantities of goods outstanding shall cause the whole balance of the price to become due forthwith
- 7.4 The price of the goods shall be due in full to the company in accordance with the terms of the order and the buyer shall not be entitled to exercise any set-off lien or any other similar right to claim.
- 7.5 The time of payment shall be of the essence of the contract.
- 7.6 Without prejudice to any other rights it may have, the company is entitled to charge interest at 4% above the current base rate of Nat West Bank plc on overdue payments of the price of the goods or the price of the instalments thereof.

8. Delivery

- 8.1 The period for delivery shall be the period within which the goods are intended to be dispatched from the company's premises and shall be calculated from the time of the receipt by the company of the order or from the receipt of all necessary information to enable the company to manufacture or procure the manufacture of the goods, whichever shall be the later and the buyer shall take delivery of the goods within that period.
- 8.2 All times or dates given for delivery of the goods are given in good faith, but without any responsibility on the part of the company. Time of delivery shall not be of the essence of any contract, nor shall the company be under any liability for delay whether or not beyond the company's reasonable control unless otherwise expressly agreed in writing at or before the date of the order, in which case the company's liability shall be limited to such liquidated damages as may specifically be agreed at or before that date.
- 8.3 Where the goods are handed to a carrier for carriage to the buyer, any such carrier shall be deemed to be an agent of the company and not the buyer for all purposes.
- 8.4 No liability will attach to the company for any damage to, or loss of the goods whilst in the course of delivery by a carrier.
- 8.5 Where goods are despatched for delivery by means of the company's vehicles no liability for non-delivery, partial loss or damage to the goods occurring prior to delivery will attach to the company unless claims to that effect are notified in writing by the buyer within seven days of delivery for partial loss or damage or within ten days of the date of the invoice for non-delivery
- 8.6 In the event of a valid claim under condition 8.3 for non-delivery, partial loss or damage the company undertakes to replace the goods at its expense, but shall not be under any further or other liability to any person in connection with such non-delivery partial loss or damage.

- 8.7 If the buyer shall fail to give notice in accordance with condition 8.3 above, the buyer shall be bound to accept and pay for goods accordingly.
- 8.8 If for any reason, the buyer is unable to accept delivery of the goods at the time when the goods are due and ready for delivery the company may at its sole discretion, without prejudice to its other rights, store the goods at the risk of the buyer and take all reasonable steps to store, safeguard and insure them at the cost of the buyer, provided that the buyer shall be immediately informed thereof.
- 8.9 The buyer shall be obliged to accept delivery at any time before the contract is determined or instalment cancelled.
- 8.10 The company shall have the right to make delivery by instalments of such quantities and 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

9. Returns

- 9.1 Goods supplied in accordance with the contract cannot be returned without the written permission of the company. Duly authorised returns shall be returned to the company's premises at the buyers expense

10. Sub-contracting

The company may assigned the contract with the buyer or sub-contract the whole or any part thereof to any person, form or company.

11. Passing of Title and Risk

- 11.1 Risk of damage to or loss of the goods shall pass to the buyer when;
- a) In the case of goods to be delivered at the company's premises at the time when the company notifies the buyer that the goods are available for collection or,
 - b) In the case of goods to be delivered otherwise than at the company premises at the time of delivery, or if the buyer wrongfully fails to take delivery of the goods at the time when the company has tendered delivery of the goods.
- 11.2 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 company 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 company to the buyer for which payment is then due.
- 11.3 Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as the company's fiduciary agent and bailee and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the company's property. Until that time the buyer shall be entitled to re-sell or use the goods in the ordinary course of its business, but shall account to the company for the proceeds of sale or otherwise of the goods and shall keep all such proceeds separate from any monies or property of the buyer and third parties.
- 11.4 The buyers right to possession of the goods shall cease if;
- a) the buyer has not paid for the goods in full by the expiry of any credit period allowed by these conditions, or the buyer is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangement, or
 - b) a receiver, liquidator or administrator is appointed in respect of the buyers business

On cessation of the buyers right to possession of the goods in accordance with this clause the buyer shall at his own expense make the goods available to the company and allow the company to repossess them. For this purpose the buyer hereby grants to the company, its agents, and employees an irrevocable license to enter any premises where the goods are stored in order to repossess them or inspect them at any time.

12. Conditions and Warranties

- 12.1 Every description or specification of the goods is given in good faith based on average results of standard tests, but any conditions or warranties express or implied that the goods shall correspond with such description or specification are hereby expressly negated, and the use of any such description or specification shall not constitute a sale by description.
- 12.2 Any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade, custom, or usage) as to the quality or fitness of the goods for any particular purpose, even if that purpose is made known expressly or by implication to the company are hereby expressly negated.
- 12.3 Notwithstanding that a sample of the goods may have been exhibited to and inspected by the buyer or results of standard tests upon a sample furnished to the buyer, it is hereby declared that such sample was so exhibited and inspected or tested solely to enable the buyer to judge for itself the quality of the bulk, and as not so as to constitute a sale by sample. The buyer shall take the goods at its own risks as to their corresponding with the sample or as to their quality, condition or sufficiency for any purpose.

13. Defective Goods

- 13.1 In substitution for all and any other right which the buyer would or might have had but for these conditions, the company undertakes at its discretion to repair or supply free of charge, at the place of delivery specified by the buyer for the original goods, a replacement of the goods if manufactured or processed by the company in which a serious defect in materials or workmanship appears within twelve months of delivery provided that in any case the goods have been accepted and paid for and were manufactured or processed by the company.
- 13.2 In the case of the goods not of the company's manufacture, the company will pass on to the buyer any benefits obtainable under warranty given by the company's supplier provided that the goods have been accepted and paid for.
- 13.3 In order to exercise its rights under this paragraph, the buyer shall inform the company within seven days of the date when such defect appeared, or ought reasonably to have been discoverable, and shall return the defective goods carriage paid to the company's premises.
- 13.4 Nothing herein shall impose any liability upon the company in respect of any defect in the goods arising out of fair wear and tear refitting, dismantling, or altering of the goods, or if fitting any attachment thereto after despatch from the company's premises, the acts, omissions, negligence, or default of the buyer its servants, or agents, or any third party including in particular but without prejudice to the generality of the foregoing;
- a) Any failure by the buyer to comply with any recommendations of the company as to storage or handling of the goods
 - b) Faulty installation, want of proper attention, or improper use.
- 13.5 Where the goods are for delivery in instalments any defect in any instalment shall not be grounds for cancellation of the remainder of the instalments, and the buyer shall be bound to accept delivery thereof.
- 13.6 Nothing herein shall have the effect of excluding or restricting the liability of the company for death or personal injury resulting from negligence.

14. Designs and Drawings

- 14.1 The company shall not be liable for imperfect work caused by any inaccuracies in any design, drawing, bill of quantities, or specification supplied or approved by the buyer.
- 14.2 All lighting designs and advice are given in good faith, and any inaccuracies or defect or imperfect result caused by such design will not be accepted by the company as its responsibility expressly or implied unless agreed to in writing by the company prior to delivery of the goods.

14.3 All technical information or test results given by the company are indicative of the performance of a test product in laboratory conditions. It is expected that some variation to these results will occur with respect to other products of a similar type, and therefore the company can accept no responsibility for such variation, to a greater or lesser extent

15. Consequential Loss

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

16. Health and Safety

16.1 Section 6 of the Health and Safety at Work Act, 1974 provides that manufacturers, designers, importers or suppliers of goods for use at work, have a duty to ensure so far as is reasonably practicable, that the article will be safe and without risk to health when properly used. An article is not regarded as being 'properly used' if it is used without regard to any relevant information or advice relating to its use made available by the manufacturer designer, importer or supplier.

16.2 With regard to the provisions of Section 6 of the Act, the following is given as a guide to the information relating to the design, construction, installation and proper use of the goods that is readily available to the buyer. This list is not exhaustive:

- a) Relevant British Standards Specifications and Codes of Practice
- b) Relevant European Standards, Directives and Codes of Practice
- c) Relevant publications by the Institute of Electrical Engineers, the Chartered Institute of Building Services Engineers, and the Institute of Lighting Engineers
- d) The company's catalogue

16.3 The buyer undertakes to use its best endeavours to ensure that:

- a) The goods are installed, commissioned and maintained by, or under supervision of, competent persons in accordance with good engineering practice, and in particular but without prejudice the foregoing with the IEE regulations for the Electrical Equipment for Buildings, Codes of Practice, statutory requirements, and any instructions specifically advised by the company and where appropriate with particular reference to information marked on the goods.
- b) All appropriate information necessary to ensure that the goods will be safe and without risk to health, when properly used (including the information listed in the Condition 16.2 above) will be made available to all persons concerned with the use of the goods.

17. Default or Insolvency

If the buyer shall fail to accept the goods or any instalment or part instalment thereof, or shall fail to pay any sum due to the company at the proper time, or make a default in, or commit any breach of any other obligation or if any distress or execution shall be levied on the buyers property or assets or if the buyer shall make or offer to make any arrangement or composition with his creditors, or commit any act of bankruptcy, or if any bankruptcy petition be presented against him, or (if the buyer is a company) if any resolution or petition to wind up such company shall be passed or presented, or if a receiver of the whole or any part of such company's undertaking, property, or assets shall be appointed, the company in its discretion and without prejudice to any other right or claim, may by notice in writing determine wholly or in part and every contract between the company and the buyer, or may (without prejudice to the company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of goods until any defaults by the buyer be remedied.

18. Representations

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

19. Force Majure

The company shall be entitled to delay or cancel delivery, or to reduce the amount delivered, if 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 strikes, lock-outs, accidents, warfare reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, or shortage or unavailability of raw materials from normal source of supply.

20. Cancellation

Save as provided in Conditions 17 and 19 hereof, contracts or orders cannot be cancelled except by agreement in writing of both parties, and upon payment to the company of such amount as may be necessary to indemnify the company against all loss resulting from the cancellation.

21. Headings

The headings to these conditions are intended for reference only, and shall not affect the construction of these conditions.

22. Proper Law

The contract shall in all respects be governed by English Law, and shall be deemed to have been made in England, and the buyer and the company agree to submit to the exclusive jurisdiction of the English Courts.