

Page 1 of 7 CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions the following expressions shall carry the following meaning in so far as the context shall admit:

'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

'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 a contract for the purchase and sale of the Goods.

'DEBT' means any liability or obligation (whether part-paid secured or otherwise) including any future or contingent liability or obligations.

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

'SELLER' means Whyte and Ivory Limited (registered in England and Wales under number 7075126 and such expression shall include its "holding and subsidiary" companies and other "subsidiary" companies of such "holding" company as such expressions are defined by S.736 of the Companies Act 1985.

'WRITING' includes telex, cable, facsimile transmission, e-mail and comparable means of communications.

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

1.3 The headings in the Conditions are for convenience only and shall not affect their interpretation.

1.4 Any reference to a masculine provision shall be deemed to include reference to a female or neuter provision or vice versa and any reference to a singular provision shall be deemed to include reference to the plural and vice versa.

2. Basis of the Sale

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

2.2 No variation on the Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and a director of the Seller.

2.3 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.

2.4 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 a director of 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.

2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

3.1 Any quotation given by the Seller shall not be binding on the Seller and shall not be deemed to constitute an offer.

3.2 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by a director of the Seller or a duly authorised representative.

3.2 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 period to enable the Seller to perform the Contract in accordance with its terms.

- 3.4 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 period to enable the Seller to perform the contract in accordance with its terms.
- 3.5 The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Unless earlier withdrawn or unless the quotation otherwise states a quotation is open for acceptance for a period of 30 days from the date thereof.
- 3.6 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 loss damages cost 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 right of any other person which results from the Seller's use of the Buyer's specification.
- 3.7 The specification and design of the Goods (including copyright design right or other intellectual property in them) shall be between the Seller and the Buyer be the property of the Seller.
- 3.8 All goods sold in retail packaging may be resold by the Buyer only in the packaging supplied by the Seller and in no case may any trade mark other than those applied by the Seller be marked on or applied in relation to the goods.
- 3.9 No right or licence is granted under the Conditions to the Buyer under any patent trade mark copyright registered design or other intellectual property right except the right to use or re-sell the Goods.
- 3.10 The Seller reserves the right to make (without any notice thereof) any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or EC requirements or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.
- 3.11 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.
- 3.12 Except as otherwise agreed in the Conditions all drawings descriptive matters samples specifications catalogues brochures photographs technical literature and advertising matter are published or issued for the sole purpose of giving an approximate idea of the goods described therein and no information in any of them or in any other document whatever shall form part of the contractual description of the Goods nor shall they form part of the Contract and the Seller not be liable for any inaccuracies or omissions therein.

4. Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current and the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which they may be altered by the Seller without giving notice to the Buyer.
- 4.2 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) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated in any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and a director of the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 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 or for any reason whatever.

- 4.6 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned to the Seller before the due payment date.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and a director of the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller had notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's Invoice and the Seller shall be entitled to recover the price 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 of the Contract Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then 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
 - 5.3.2 suspend any further deliveries to the Buyer; and
 - 5.3.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported, appropriation by the Buyer); and
 - 5.3.4 charge the Buyer interest (both before and after any judgement) on all amounts unpaid at the rate of 4 per cent per annum above the base rate of National Westminster Bank Plc from time to time before as well as after any court judgement until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collection the Goods at the Seller's premises at any time after the Seller has notified the Buyer that Goods are ready for collection or if some other place for delivery is agreed by the Seller delivering the Goods to that place.
- 6.2 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. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the delivery of the Goods is to be made by the Seller in bulk the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the 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.
- 6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control of 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.
- 6.6 If the Buyer fails to take delivery of the goods or fails to give the Seller adequate delivery instruction in the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

- 6.7 For any damage in transit or non-delivery the Seller's liability will only be to replace the goods within a reasonable time subject to the Goods being returned to the Seller forthwith.

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to 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 the 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 Debts owed by the Buyer to the Seller.

- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller'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 clearly identified as the Seller's property.

- 7.4 Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall hold such part of those proceeds as relate to the Goods in trust for the Seller (such part being deemed to equal the amount owing to the Seller at the time of the receipt of such proceeds) and keep them separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds property stored protected and insured. The Seller may be notice to the Buyer revoke the Buyer power of sale hereunder.

- 7.5 If the Goods are prior to payment of the price thereof by the Buyer made up or incorporated in our mixed with other goods then if they remain separately identifiable the Seller shall be entitled to the property in such other goods until payment shall have been made or such other goods shall have been sold.

- 7.6 If the Buyer sells the Goods or the goods in which the Goods have been incorporated or mixed the sale shall be on behalf of the Seller as owner thereof (as the case may be) and the proceeds of any such sale (or such part thereof as shall equal the Debt at the time of the Buyer's receipt thereof) shall be held in trust for the Seller and in a separate identified account.

- 7.7 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.

- 7.8 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 7.9 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.

8. Warranties and Liability

- 8.1 The Seller

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

8.1.2 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 instruction (whether oral or written) misuse or alteration or repair of the Goods without the Seller's approval;

8.1.3 Shall be under no liability under any warranty condition or guarantee if the total price for the Goods has not been paid by the due date for payment;

Subject as expressly provided in the 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 and/or the Unfair Terms in Consumer Contracts Regulations 1999) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 8.2 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 specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 3 days from the date of delivery. The Buyer shall immediately notify the Seller if the Goods are not received within 7 days of the date of the invoice. If 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.
- 8.3 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 the 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.
- 8.4 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 Conditions for any consequential loss of 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 the Conditions.
- 8.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform and of the Seller's obligation 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 caused beyond the Seller's reasonable control:
- 8.5.1 Act of God explosion flood tempest fire or accident;
 - 8.5.2 War or threat of war sabotage insurrection civil disturbance or requisition;
 - 8.5.3 Acts restriction regulation bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - 8.5.4 Import or export regulation or embargoes;
 - 8.5.5 Strikes lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 8.5.6 Difficulties in obtaining raw materials labour fuel parts or machinery;
 - 8.5.7 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 of other industrial or intellectual property rights of any other person then unless the claim arises from the use of any drawing design or specification supplied by the Buyer 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 by 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 the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 9.1.3 exempt pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - 9.1.5 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 by any other party in respect of any such claim; and
 - 9.1.6 without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expense for which the Seller is liable to indemnify the Buyer under this clause.

10. Insolvency of Buyer

- 10.1 This clause applies if:
- 10.1.1 the Buyer suffers any distress or execution upon any of its goods or if the Buyer offers to make any arrangement with its creditors or (being an individual of firm) and bankruptcy petition is presented against the Buyer or if the Buyer is unable to pay its debts as they fall due or (being a company) any resolution or petition to wind-up the Buyer (otherwise than for the purposes of a bona fide amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of its business or assets or if the Buyer shall suffer any analogous proceeding under foreign law; or
 - 10.1.2 an encumbrancer takes possession 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.
- 10.3 In addition to any other right or lien to which the Seller may be law or pursuant to the Conditions be entitled the Seller shall also be entitled to a general lien on all the goods and other property of the Buyer in the Seller's possession whether paid for or not and a right of sale of such goods and other property at the Seller's sole discretion for any Debt due to the Seller from the Buyer.
- 10.4 The Seller shall have the right to put any goods or property over which it has a lien into a saleable state by any means whatsoever and (without prior notice to the Buyer) to sell such goods whether by private treaty or otherwise on such terms as the Seller may agree. Out of the proceeds of sale the Seller shall be entitled to retain a sum equivalent to the Debt due to it from the Buyer together with the cost of putting the goods into a saleable state as aforesaid and the expenses of sale and any balance shall be paid to the Buyer.

11. Export Terms

- 11.1 In the 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 the Conditions but if there is any conflict between the provisions of Incoterms and the conditions the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of the Conditions.
- 11.3 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 any payment of any duties thereon.
- 11.4 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(2) of the Sale of Goods Act 1979.
- 11.5 The Buyer shall be responsible for arranging the 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 any defect in the Goods which would have been apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of National Westminster Bank Plc in England as may be specified in the bill of exchange.

- 11.7 The Buyer undertakes not to offer the Goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is placed or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

12. General

- 12.1 The Seller is a member of a group of companies and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other group provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller. Otherwise the provisions of the Contracts (Right of Third Parties) Act 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.
- 12.2 Any notice required or permitted to be given by either party to the other under the Conditions shall be in Writing addressed to that other party at 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 notice.
- 12.3 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 and the Seller shall be under no liability whatever to the Buyer for any loss (including consequential or indirect loss) and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of the Contract.
- 12.4 If any provision of the conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provisions in question shall not be affected thereby.
- 12.5 The contract shall be governed by and construed in accordance with the laws of England and the Buyer agrees to submit to the no-exclusive jurisdiction of the English Courts.