

STANDARD TERMS and CONDITIONS of SALE BOWERS and JONES LIMITED

1. Definitions

In these Conditions

Seller	means Bowers and Jones Limited;
Buyer	means the person firm or company who has placed an order with the Seller which expression shall include the principal on whose behalf the person or company placing the order may be acting as agent;
Goods	means the goods, materials or machinery (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions;
Parties	means the Seller and the Buyer;
Order	means the Buyer's written instructions to the Seller to supply the Goods;
Acceptance of Order	means the written acceptance by the Seller of the Order;
Contract	means the contract formed by the despatch of the Acceptance of Order.

Nothing in these Conditions shall exclude or restrict the statutory rights of a Buyer who deals as a consumer within the meaning of the Unfair Contract Terms Act 1977.

Nothing in these Conditions shall exclude or restrict the conditions implied by Section 12 of the Sale of Goods Act 1979.

Clause headings are for information only and shall not affect (nor be treated or interpreted so as to affect) the construction of these Conditions.

2. Terms of Contract

- 2.1 These Conditions are the only terms or conditions on which the Seller gives quotations or sells or supplies the Goods and (subject to the provisions of this Clause 2) override any other representations terms or conditions stipulated referred to or implied by the Buyer or the Seller its servants or agents whether in any order or in any document or in any negotiation or discussion and the placing of an Order by the Buyer shall be deemed to be an acceptance of these Conditions.
- 2.2 No variation of these Conditions shall be effective unless made in writing signed by or on behalf of the Parties.

3. Orders and Specifications

- 3.1. A Contract shall exist between the Parties upon and only upon the Seller despatching the Acceptance of Order and accordingly each Order when accepted in accordance with these Conditions constitutes a separate Contract between the Parties.
- 3.2. 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 the cancellation.
- 3.3. 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, costs, charges 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.
- 3.4. 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 Buyer's specification, which do not materially affect their quality or performance.
- 3.5. Where the Goods are manufactured wholly or partly in accordance with designs specifications drawings documents and or data supplied by the Buyer the Seller shall in no circumstances be liable for any costs charges damages losses (including loss of profit) or expenses of any kind incurred as a result of any defect or insufficiency in such designs specifications drawings or data.

4. Performance

Performance of the Contract by the Seller is subject to the availability of goods and materials from time to time.

5. Prices

- 5.1 Any prices appearing on the Seller's price lists, catalogues, booklets and advertising matter are for general guidance only.
- 5.2 Prices will be fixed or agreed as reflected in the Acceptance of Order.

- 5.3 Prices are exclusive of:-
 - 5.3.1 V.A.T.;
 - 5.3.2 Carriage and delivery costs;
 - 5.3.3 Loading costs;
 - 5.3.4 Packaging costs; and
 - 5.3.5 Cost of insurance.
- 5.4 Where at the Buyer's request the Seller undertakes urgent delivery the Seller reserves the right to make an exceptional charge for such delivery irrespective of the value of the Order in question.
- 5.5 The Seller reserves the right to alter prices at any time after quotation and before delivery of the Goods in the event of any increase in the cost to the Seller of supplying the Goods by reason of an increase in the cost to the Seller of raw materials, labour and services or as a result of any matter or thing beyond the control of the Seller and upon any such alteration being communicated in writing to the Buyer the Buyer shall be bound to pay the altered price.

6. Payment

- 6.1 Payment for the Goods shall be due on the last day of the month immediately following the month in which the Goods have been invoiced to the Buyer ("the due date for payment").
- 6.2 Payment shall be deemed not to have been made until any and all cheques drafts and bills by which payment is to be effected have been cleared or honoured (as the case may be).
- 6.3 The Seller reserves the right to charge interest on payments outstanding after the due date for payment at the rate of (both before and after judgement) four per cent per annum above the HSBC Bank PLC Base Lending Rate for the time being in force or eight per cent per annum, whichever shall be the higher, calculated on the outstanding balance (including interest) due from the due date for payment down to receipt by the Seller of payment such interest compounding and being added to the outstanding balance due at monthly intervals.
- 6.4 Should the Buyer fail to give the Seller adequate delivery instructions or to take delivery of the Goods or to collect the Goods from the Seller's premises on any agreed date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled (but not bound) to either:-
 - 6.4.1 store the Goods until actual delivery and charge the Buyer for the storage costs (including insurance); or
 - 6.4.2 sell the Goods at the best price, readily obtainable.

7 Delivery

- 7.1 Notwithstanding any requirement in the Order or otherwise as to the date of delivery time for delivery shall not be of the essence of the Contract and any dates times or periods agreed between the Parties or quoted by the Seller for delivery of Goods are estimates only and the Seller shall not be liable for failure to meet such estimates or for any loss or damage, whether arising from or in connection with any loss of profit or otherwise, or any costs charges or expenses resulting from or incurred as a consequence of such failure whether due to negligence or otherwise and accordingly the Buyer shall not be entitled to refuse to accept Goods merely because of such failure.
- 7.2 Delivery shall take place:-
 - 7.2.1 where the Seller undertakes carriage, when the Goods are loaded off the Seller's medium of transport at the address specified by the Buyer;
 - 7.2.2 where the Buyer undertakes to collect the Goods, when the Goods are made available for collection by the Buyer at the Seller's premises.
- 7.3 The Goods may be delivered in advance of any quoted or agreed delivery date upon giving reasonable notice to the Buyer.
- 7.4 The Seller shall not be liable for and the Buyer shall fully indemnify the Seller against any and all costs charges and expenses incurred due to a delay in delivery of the Goods where such a delay is a result of the Buyer's failure to provide as and when required all instructions licenses guarantees deposits and all such information and other assistance as may be reasonably required by the Seller.
- 7.5 The Seller accepts no liability for any loss or damage resulting from failure to deliver the Goods where the failure to deliver is due to a cause beyond the Seller's reasonable control or due to the Buyer's fault.
- 7.6 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 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.

8 Literature

- 8.1 All specifications drawings and data contained in the Seller's published literature and all advertising matter are hereby declared to be approximate only (or where tolerances are prescribed, to be within those tolerances) and shall not form part of any Contract based thereon.
- 8.2 All designs, specifications, drawings, documents, data and information supplied by one of the Parties to the other in connection with the Contract and all other material of a similar nature supplied for any other purpose whatsoever shall:-
 - 8.2.1 remain the property and copyright of the party supplying them; and

- 8.2.2 be treated as confidential by the party supplied with them.
- 8.3 In the event that a Contract is not proceeded with for any reason whatsoever, each party shall upon demand return to the other all such material as is referred to in the preceding sub-clause and undertakes to destroy any copies thereof which may have been made by it.

9 Exclusion of Liability

- 9.1 Subject to sub-clause 9.2 the Seller shall be under no liability:-
- 9.1.1 in respect of the quality condition or description of the Goods or their fitness for any particular purpose; or
 - 9.1.2 for any loss or damage (whether direct or consequential) however caused to the Buyer or to any other person; or
 - 9.1.3 for death or personal injury (caused otherwise than by the negligence of the Seller) to the Buyer or to any other person.
- 9.2 9.2.1 The Seller will only be liable for defects due to faulty materials or workmanship which may appear within thirteen weeks after delivery of the goods by the Seller and of which notice is given immediately to the Seller by the Buyer but such liability will not extend to defects arising out of a design or specification stipulated by the Buyer.
- 9.2.2 The Seller warrants that Goods manufactured by it are fit for the Specified Purpose (as hereinafter defined) only in cases where the Buyer has made the exact purpose for which the Goods are required and the use to which they will be put ("the Specified Purpose") expressly known to the Seller and the Seller has undertaken as part of the Contract to be solely responsible for producing Goods fit for the Specified Purpose and as a consequence the Buyer has relied totally upon the skill, knowledge and judgement of the Seller, PROVIDED THAT notice is given to the Seller that the Goods are not fit for the Specified Purpose within thirteen weeks after delivery of the Goods.
- 9.2.3 In the event of any defect due to faulty materials or workmanship appearing within thirteen weeks after delivery by the Seller and upon immediate notice thereof being given to the Seller and in the event of the Goods not being fit for the Specified Purpose and notice thereof being given to the Seller within thirteen weeks of delivery, the Seller may entirely at its own discretion either:-
- 9.2.3.1 replace any defective Goods; or
 - 9.2.3.2 remedy any defect; or
 - 9.2.3.3 refund the purchase price of the Goods if paid or of any defective part thereof after deducting such sum as the Seller considers appropriate having regard to the extent, if any, to which the Goods may have been used or interfered with by the Buyer.
- The exercise by the Seller of any of the above options shall be or shall be deemed to be accepted by the Buyer in full settlement of all liability of the Seller.
- 9.3 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), a misuse, or alteration or repair of the Goods without the Seller's approval.
- 9.4 The Seller shall have no liability whatsoever to the Buyer arising from, and the Buyer shall at all times indemnify the Seller in respect of all loss or damage suffered by any person firm company or property and against all actions claims demands costs charges or expenses in connection therewith for which the Seller may become liable as a result of, the Goods having been used for any purpose other than those for which they are intended or otherwise than in accordance with the Seller's instructions (if any) or the Goods being stored in improper conditions or being carelessly handled or incorrectly installed.
- 9.5 The Seller shall be under no liability under sub-clause 9.2 (or under any warranty, condition or guarantee) if the total price for the goods has not been paid by the due date for payment.
- 9.6 In the event of the Buyer acquiring goods from or through the Seller which the Seller has itself acquired in substantially the same form, or actually in the same form, from a manufacturer, whether such goods are used by the Seller as a component part of a larger item ordered by the Buyer or not, the liability of the Seller to the Buyer in respect of the goods concerned shall not exceed the liability of the manufacturer to the Seller.
- 9.7 Except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Acts 1977) any term condition representation contrary to the Condition contained in Clause 9 whether express or implied by Statute, Common Law or otherwise is hereby excluded.
- 9.8 The foregoing sub-clauses 9.1 and 9.2 shall apply save that if any Act of Parliament or other Statutory Provision for the time being in force shall avoid or make unenforceable any of the provisions thereof the said sub-clauses shall be deemed to apply with the exclusion of the provisions thereof which shall be void or unenforceable as aforesaid.

10 Materials Provided by the Buyer

Notwithstanding the provisions of Clause 9 the Seller gives no warranty in respect of parts material or components which are used in the manufacture of the Goods and which are provided by the Buyer.

11 Risk and Property

- 11.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
- 11.1.1 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

- 11.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time when the Goods are despatched from the Seller's premises.
- 11.2 For the purposes of Section 17(1) of the Sale of Goods Act 1979 (and notwithstanding the passing of risk in or delivery of the Goods) the Goods remain the absolute property of the Seller until the Seller has received payment in full in cash or cleared funds of the price for the Goods and any other sums due from time to time from the Buyer to the Seller and until such time as the property in the Goods passes to the Buyer hereunder the Buyer shall hold the Goods in a fiduciary capacity.
- 11.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall not sell, or create any mortgage, charge or security over, the Goods nor purport to do any of these things. If in breach of this Clause 11.3 the Buyer sells or purports to sell the Goods then the Seller shall be entitled to the proceeds of such sale or purported sale.

12 Intellectual Property

No warranty or representation is given by the Seller that the Goods do not infringe any letters Patent, Trade Marks, Registered Designs, Copyrights or other intellectual property rights.

13 Force Majeure

The Seller shall not be liable in any way for any loss or damage arising directly or indirectly, through or in consequence of delivery of the Goods being prevented or delayed by happenings or occurrences due to or by reason of any matters or things beyond the control of the Seller including (but without limitation) mobilisation, hostilities, acts of the Queen's enemies or war (whether declared or not), Government action, departmental instructions or Act of God, riots combination of workmen, lockouts, strikes or disturbances wherever taking place, shortage of labour, raw materials fuel or power in consequence of non-delivery or any other cause, want of transport, accidents, fire, flood, blocking of or accidents to aeroplanes, shipping or railway lines, failure of ships to sail at advertised times, reduction or stoppage of output at the works where the Goods are being manufactured or premises from which they are to be delivered through fire, flood, heat, frost, storm, tempest or intemperate weather, breakdowns, accidents to machinery, late provision to the Seller of any materials information or instructions pertinent to the fulfilment of the Contract by the Seller or any other causes or any circumstances whatsoever beyond the Seller's control or any acts of third parties whether criminal or otherwise and in these circumstances the Seller expressly reserves the right to cancel or suspend the whole or any part of the Contract.

14 Buyer' Undertakings

- 14.1 The Buyer shall at all times indemnify the Seller in respect of all loss or damage suffered by any person firm company or property and against all actions claims demands costs charges or expenses in connection therewith for which the Seller may become liable in respect of the Goods.
- 14.2 The Buyer accepts full liability for and shall at all times indemnify the Seller against all actions claims demands costs charges and expenses whatsoever arising out of any loss or damage to any persons firm company or property by reason of the Seller having relied on any design, specifications, drawings, documents, data or the like supplied to the Seller by or at the instigation of the Buyer in connection with the performance of the Contract.

15 Services Provided by the Seller

Where the Seller provides or performs any services for, or gives any advice to the Buyer in relation to the Goods; whether at the request of the Buyer or otherwise, the Seller shall not be liable to the Buyer in respect of any damage or loss of whatsoever kind caused to the Buyer or to the property of the Buyer and arising out of the provision or performance of such services or the giving of such advice.

16 General Lien

- 16.1 The Seller shall have a general lien over any of the goods or chattels of the Buyer in the Supplier's possession for any moneys whatsoever due from the Buyer to the Seller.
- 16.2 If any lien is not satisfied within 14 days of such moneys becoming due the Seller may in its absolute discretion sell such goods or chattels as agents for the Buyer and apply the proceeds towards the moneys due and the expenses of the sale, and shall upon accounting to the Buyer for the balance (if any) remaining, be discharged from all liability in respect of such goods or chattels.

17 Assignment

The contract is personal to the Buyer who shall not assign or charge the benefit thereof without the Seller's express written consent.

18 Default, Insolvency, etc

- 18.1 If the Buyer shall make default or commit a breach of these Conditions or of any other of his obligations to the Seller, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Buyer is a limited company and any resolution or petition to wind up the Buyer's business (other than for the purposes of amalgamation or reconstruction) shall be passed or presented, or if a receiver of the undertaking, property or assets or any part thereof the Buyer (being a limited company) shall be appointed, then without prejudice to any other right or remedy available to the Seller the Seller may without notice:-
- 18.1.1 suspend or determine the Contract or any unfulfilled part thereof; and
- 18.1.2 halt any Goods in transit; and
- 18.1.3 either by an agent or itself have access to the Buyer's premises for the protection, removal, realisation and disposal of any Goods at any time and from time to time in which the property shall not have passed from the Seller to the Buyer.

- 18.2 The granting by the Seller to the Buyer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of the Seller's entitlement to enforce any of its rights under the Contract (except and to the extent that it shall constitute a variation of these Conditions which has been made in accordance with Clause 2.2 hereof).
- 18.3 If the Seller terminates the Contract in accordance with this Clause, then, without prejudice to any other rights the Seller may have, it shall be entitled to retain any advance payment made by the Buyer.

19 Notices

- 19.1 Notices shall be made in writing and posted in a first-class pre-paid envelope to the Buyer's or Seller's address as shown respectively on the Order and Acceptance of Order or failing those to the address at which the one party reasonably believes the other to be carrying on business.
- 19.2 A notice shall be deemed to have been given forty-eight hours after posting (or ninety-six hours after posting where the notice is sent from and/or addressed to an address outside the United Kingdom) and in proving such service it shall be sufficient to show that the envelope was properly addressed and put into the post.

20 Proper Law

The validity construction and performance of the Contract shall be governed by the Law of England and the Parties hereby submit to the sole and exclusive jurisdiction of the courts of England and Wales for the resolution of all disputes arising under the Contract.

21 Severance

These Conditions shall apply in full save that if any Act of Parliament or other Statutory Provision for the time being in force shall avoid or make unenforceable any of the provisions hereof these Conditions shall be deemed to apply with the exclusion of the provisions hereof which shall be void or unenforceable as aforesaid.