

James Armstrong & Co Ltd - Standard Conditions of Sale / Terms of Business

1 Definitions

- 1.1 "Buyer" means the person or legal entity who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company
- 1.2 "Company" means James Armstrong and Company Limited
- 1.3 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company and the Buyer
- 1.4 "Contract" means the contract for the purchase and sale of the Goods
- 1.5 "Delivery Date" means the date specified by the Company when the goods are to be delivered
- 1.6 "Goods" means the articles which the Buyer agrees to buy from the Company
- 1.7 "Price" means the price for the Goods excluding transport packing and insurance
- 1.8 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time
- 1.9 The headings in these Conditions are for convenience only and shall not affect their interpretation

2 Basis of sale

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions
- 2.4 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company
- 2.5 Any advice or recommendation given by the Company 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 company is followed or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed
- 2.6 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 Company shall be subject to correction without any liability on the part of the Company

3 The Price and payment

- 3.1 The Price shall be the Company's quoted price or the price set out overleaf which shall be binding on the Company provided that the buyer shall accept the Company's quotation within thirty days. The Price is exclusive of value added tax which shall be additional payable at the rate ruling on the date of the Company's invoice
- 3.2 Payment of the Price and VAT shall be due within 28 days of the date of the invoice (unless otherwise agreed in writing with the Company) without deduction or set off. Time for payment shall be of the essence
- 3.3 The Company 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 Company which is due to any factor beyond the control of the Company (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 Company adequate information or instructions
- 3.4 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company shall be entitled to:
- 3.4.1 cancel the contract or suspend any further deliveries to the Buyer
- 3.4.2 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 Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and
- 3.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per cent per annum above Lloyds Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

4 The Goods

- 4.1 The quantity quality and description of and any specification for the goods shall be as set out in the Company's quotation or acknowledgement of order or if accepted by the Company the Buyer's order
- 4.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms
- 4.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Company against all loss damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company 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 Company's use of the Buyer's specification
- 4.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or where the Goods are to be supplied to the Buyer's specification which do not materially affect their quality or performance
- 4.5 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company 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 Company as a result of cancellation

5 Warranties and Liability

- 5.1 The Company warrants that the Goods will at the time of delivery correspond to the description given by the Company
- 5.2 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977) all other warranties conditions or terms whether implied by statute or common law or otherwise are hereby excluded
- 5.3 The warranty in clause 5.1 is given by the Company subject to the following conditions:
- 5.3.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer
- 5.3.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear willful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval
- 5.3.3 the Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the Price and value added tax for the Goods has not been paid by the due date for payment
- 5.3.4 the above warranty does not extend to parts materials and equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacture to the Company
- 5.4 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 Company within 7 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. If delivery is not refused and the Buyer does not notify the Company accordingly the Buyer shall not be entitled to reject the Goods and the Company 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

- 5.5 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 Company in accordance with these Conditions the Company shall be entitled to replace the Goods (or the part in question) free of charge or at the Company's sole discretion refund to the Buyer the Price (or a proportionate part of the Price) but the Company shall have no further liability to the Buyer
- 5.6 Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Buyer by reason of any representation of any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any direct or indirect loss or damage including any consequential loss, any loss of profit, economic loss, costs, expenses or other claim whether for damages compensation or otherwise and whether caused by negligence of the Company, its employees or agent 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 these Conditions.
- 5.7 The Company 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 any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control

6 Delivery of Goods

- 6.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company 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 Company in writing. The Goods may be delivered by the Company in advance of the Delivery Date upon giving reasonable notice to the Buyer
- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these 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
- 6.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault and the Company is accordingly liable to the Buyer the Company'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
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company the Company may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or
- 6.5.2 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 or charge the Buyer for any shortfall below the Price

7 Title and risk

- 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 Company's premises at the time when the Company 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 Company's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Company has tendered delivery of the Goods
- 7.2 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
- 7.3 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 resell 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 whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and has not been resold) the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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
- 7.5 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 Company but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

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8.1 Insolvency of the Buyer

- 8.1.1 This clause applies if:
- 8.1.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
- 8.1.3 an encumbrancer takes possession or a receiver or manager or administrator receiver or administrator is appointed of any of the property or assets of the Buyer or
- 8.1.4 the Buyer ceases or threatens to cease to carry on business or
- 8.2 the Company reasonably believes 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 Company the Company 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

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Information

The Company will provide the Buyer on request with information as to the proper and safe use of the Goods and the Buyer shall at all times obey and comply with and shall procure that any third party shall comply with the Company's instructions or other information relating to the use of the Goods

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10.1 General

- Any notice required or permitted to be given by either party to the other under these 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 the notice
- 10.2 No waiver by the Company 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
- 10.3 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 the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby
- 10.4 The Contract and these Conditions shall be governed by the laws of England
- 10.5 The parties hereby submit to the exclusive jurisdiction of the English courts