

MUELLER EUROPE LIMITED

CONDITIONS OF SALE

1. TERMINOLOGY

- a) In these Conditions "the Seller" is Mueller Europe Limited and "the Buyer" is the person or company placing an order with the Seller which is accepted. The expression "the Goods" means the articles or things or any of them described in the Seller's acceptance of order form. "The Contract" means any contract for the sale of the Goods made between the Buyer and the Seller.
- b) The commercial terms in the Contract, for example f.o.b., c.i.f. and c. & f. shall have the meanings assigned to them by the ten current edition of Incoterms.

2. ACCEPTANCE OF ORDERS

- a) Any quotation given by the Seller is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Seller in pursuance of a quotation or otherwise shall be binding on the Seller unless and until it is accepted in writing.
- b) The Contract shall incorporate and be subject to these Conditions according to their provisions, the only terms of the Contract shall be those contained expressly and any other representation or warranty written or oral made or given prior to the Contract is hereby expressly excluded. In the event of the Buyer seeking to incorporate special conditions into the Contract such special conditions shall not apply unless they are accepted and agreed by the Seller in writing.
- c) In the event that no quotation or written acceptance of order is given by the Seller and the Seller has received an order from the Buyer and provided that the Buyer shall have notice of these Conditions in such circumstances all the goods are supplied subject to these Conditions.
- d) Material from stock is offered subject to being unsold upon receipt of written confirmation from the Buyer.
- e) No cancellation is permissible without the consent of the Seller.

3. PRICE

- a) The acceptance of an order on a firm price basis is subject to:
 - (i) the Buyer supplying his specification with his order
 - (ii) the Buyer being willing to accept delivery within 14 days of order and
 - (iii) the Seller being able to cover and obtain the necessary raw material on the same price basis.
- b) Where orders are accepted on a provisional price basis the price ruling at the date of despatch will be charged.
- c) The price is exclusive of Value Added Tax which will be charged at the rate applicable at the date of invoice and any other tax or duty relating to the sale or the delivery of the Goods chargeable to the Seller.
- d) The price includes delivery in the United Kingdom unless the price is less than £250 or such other amount as shall from time to time be notified by the Seller.

4. DELIVERY

- a) The Seller shall make every effort to give delivery on the date or dates required by the Buyer but such date or dates are neither guaranteed nor deemed to be of the essence of the Contract. The Seller shall in no case be liable for damages nor shall the Buyer have any right to rescind the Contract for any delay in delivery.
- b) Notwithstanding any other condition herein contained the Seller may at its option deliver the Goods to the Buyer by instalments.
- c) Where the Goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these conditions shall apply and no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.
- d) If the Buyer shall refuse delivery of any consignment made during the Buyer's normal business hours the Buyer shall pay the Seller's cost of such delivery.

5. TEST CERTIFICATES : LETTERS OF COMPLIANCE

- a) If the Buyer requires the Seller to provide test certificates or letters of compliance relating to the Goods these must be specified in writing by the Buyer in placing his order and will not be issued after despatch of the Goods. The Seller reserves the right to make a charge for test certificates and letters of compliance.
- b) If the Buyer requests tests and/or inspections of the Goods these are to be carried out at the Seller's works only.

6. RISK

The risk in the Goods will pass to the Buyer when they are loaded on to the transport at the Seller's works or if the Seller is the carrier, when the Goods are off-loaded at their destination.

7. TITLE TO THE GOODS

- a) The Goods shall remain the sole and absolute property of the Seller as legal and equitable owner until such time as the Buyer shall have paid to the Seller the agreed price together with the full price of any other goods the subject of any other contract with the Seller.
- b) Until such time as the Buyer becomes the owner of the Goods he will store them on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Seller.
- c) The Buyer acknowledges that until such time as the property in the Goods passes to the Buyer he is in possession of the Goods as a bailee and fiduciary agent for the Seller.
- d) Until payment due under all contracts between the Seller and the Buyer has been made in full, in the event of sale of the Goods by the Buyer.

- (i) the Seller shall be entitled to trace all proceeds of sale received by the Buyer through any bank or other account maintained by the Buyer, and
- (ii) the Buyer shall if requested by the Seller in writing to do so assign its rights to recover the selling price of the Goods from the third parties concerned.

- e) The Seller may for the purpose of recovery of the Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- f) The Seller shall be entitled to appropriate payments by the Buyer to such goods and accounts as the Seller thinks fit, notwithstanding any purported appropriation by the Buyer to the contrary.

8. TERMS OF PAYMENT

- a) The Contract price for the Goods shall be payable in accordance with the terms of payment stated on each relevant quotation, and /or invoice relating to the Goods. If no such terms are stated, payment shall be by cash on or before the last day of the month following the date of invoice. Time of payment is of the essence of the Contract.
- b) Where the Goods are delivered by instalments the Buyer shall be obliged to pay for each instalment upon the terms set out in the sub-clause (a) of this Clause.
- c) The Seller shall be entitled to interest on any part of the Contract price not paid by its due date from that date until payment at the rate of 1.50 per cent above Lloyds Bank plc base rate or its equivalent prevailing for the time being on all the due payments.

9. SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- a) The Buyer shall have no right or claim for shortages, or defects apparent on inspection unless:
 - (i) the Buyer inspects the Goods supplied within three days of their arrival at the premises to which they are delivered:
 - (ii) a written complaint is sent to the Seller immediately after inspection by the Buyer specifying the shortage or defect and a written complaint is sent to the carrier within three days of delivery or such longer period as the carrier's conditions of business permit; and
 - (iii) the Seller is given the opportunity to inspect the Goods before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- b) Save where the Seller or its servants have been negligent the Seller shall in no circumstances be liable for claims for loss or damage in transit.
- c) If a complaint is not made to the Seller as herein provided by this condition then the Goods shall be deemed to have been delivered in the correct quantity and free of defects which would have been apparent on inspection.
- d) Where a valid complaint is made by the Buyer pursuant to this condition the Seller will at its option make good the shortage and/or deliver replacements or repair the Goods or refund to the Buyer the net invoiced price of the Goods but have no further liability whatsoever by reason thereof or by reason of any delay consequent thereupon.

10. GUARANTEE

- a) For a period of two years after delivery the Seller guarantees the Goods against:
 - (i) manufacturing defects in the Goods;
 - (ii) material faults in the Goods; or
 - (iii) failure of the Goods to conform with the prime requirements of the national/international standard marked on the Goods.

Subject to the provisions of this condition, the Seller undertakes at its option to replace or to repair such faulty or defective Goods free of charge or to refund to the Buyer the net invoiced price of such faulty or defective Goods.

- b) The guarantee contained in this condition only applies if the following conditions are adhered to:
 - (i) prior to installation the Goods have been stored with reasonable care and protection against mechanical damage, environmental damage and damage from corrosive substances;
 - (ii) installation is carried out using only goods supplied by the Seller;
 - (iii) the Goods are correctly installed and assembled in accordance with such technical rules and Codes of Practice as are valid at the time of installation;
 - (iv) the fault or defect is notified to the Seller as soon as practicable after the fault or defect has become apparent;
 - (v) the Goods are made available to the Seller for inspection and are kept so available until the final settlement of any claim.
- c) Save as aforesaid (and save in respect of death or personal injury resulting from the negligence of the Seller its servants or agents) the Seller shall not be liable to the Buyer for any claim or claims for direct or indirect consequential or incidental injury loss or damage made by the Buyer against the Seller whether in contract or in tort (including negligence on the part of the Seller its servants or agents) arising out of or in connection with any defect in the Goods or their fitness or otherwise for any particular purpose or any act omission neglect or default of the Seller its servants or agents in the performance of the Contract.

11. SUSPENSION OF DELIVERIES

Should default be made by the Buyer in paying any sum due under the Contract as and when it becomes due in addition to the Seller's rights set out in condition 7 hereof the Seller shall have the right either to suspend all further deliveries until the default be made good or to cancel the Contract so far as any of the Goods remain to be delivered thereunder.

12. INSOLVENCY AND BREACH OF CONTRACT

In the event that:

- a) the Buyer shall commit any breach of the Contract and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of a notice in writing from the Seller requesting such remedy; or
- b) any distress or execution is levied upon any of the goods or property of the Buyer; or

- c) the Buyer offers to make any arrangements with or for the benefit of its creditors or being a limited company is subject to a composition in satisfaction of its debts or scheme of arrangement of its affairs or to a petition for an administration order or has a receiver or administrator appointed of the whole or of any part of its undertaking property or assets or being an individual has a bankruptcy order made against him; or
- d) an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Seller):

the Seller shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend all further deliveries until the default has been made good or to determine the Contract and any unfulfilled part thereof or at the Seller's option to make partial deliveries. Notwithstanding any such termination the Buyer shall pay to the Seller at the Contract rate for all the Goods delivered up to and including the date of termination

13. FORCE MAJEURE AND FRUSTRATION

- a) The Seller is no way responsible for damage or loss due to or arising from any failure on the Seller's part to manufacture or deliver Goods in accordance with the Contract owing directly or indirectly to government action or control, strikes, lockouts or cessation of labour, fire, accidents, transport delays, acts of God, war or any other contingency whatsoever beyond the control of the Seller.
- b) The Seller shall be entitled, if government action or control or any of the matters mentioned in condition 12(a) above affect the Seller's ability to make deliveries, to cancel or terminate the Contract at any time so far as it is unfulfilled without prejudice to the right to recover all sums owing in respect of deliveries made prior to the date of such termination.

14. SUB-CONTRACTING

The Seller reserves the right to sub-contract the fulfillment of any order or any part thereof.

15. PROCESSING DONE ON BUYER'S MATERIAL

- a) All processing of or any work done on the Buyer's materials is entirely at the Buyer's risk and the Seller accepts no liability for damage to such material howsoever arising and the Buyer shall indemnify the Seller against all damages penalties costs and expenses to which the Seller may become liable as a result of the use of such material.
- b) Without prejudice to any other remedies which the Seller may have the Seller shall in respect of all debts due and payable by the Buyer to the Seller have a general lien on all property of the Buyer as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

16. QUANTITY TOLERANCE FOR UNDER/OVER DELIVERIES

- a) The Seller reserves the right to supply in completion of any item on an order a quantity within plus or minus ten per cent of that order.
- b) Payment will be made pro rata to the quantity supplied.

17. PACKING

Packing cases where required will be charged at cost and if returnable will be credited in full if returned in good condition within one month, carriage paid to the Seller's works.

18. SEVERANCE

If at any time one or more of the provisions of these Conditions become invalid, illegal or unenforceable in any respect under any law the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

19. HEADINGS

The headings do not form part of these Conditions of Sale nor shall they govern the interpretation of these Conditions.

20. APPLICABLE LAW AND JURISDICTION

These Conditions and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English courts.