

David Smith St. Ives Limited

Terms and Conditions of Sale

1 - Quotation and Prices. We reserve the right to revise quoted prices and charges in the event of any changes in our costs and/or prevailing conditions between the date of quotation and the date of dispatch, and in the event of any relevant devaluation or revaluation of any currency.

2 - Payment.

(a) Where goods are delivered in the United Kingdom payment will be strictly Nett Monthly. Time of payment of price is of the essence of the contract. Should goods be ready but awaiting forwarding instructions these shall be deemed to be delivered for the purposes of accounting and charged up accordingly, payment being Nett Monthly.

(b) Where goods are delivered outside the United Kingdom payment is by irrevocable letter of credit in London or by such other method as we may specify. Payment will (unless otherwise agreed) be made in sterling at the rate of exchange current at the date of invoice.

(c) Where an approved credit account is operated failure to make payments in accordance with agreed terms may result in refusal to accept further orders.

3 - Delivery.

(a) Where the contract provides for a single delivery, or where delivery is to be made in installments, such single delivery or each installment delivery, as the case may be will be delivered to and accepted by you immediately we tender the goods for delivery in accordance with the contract. Where contracts provide for deferred deliveries all the deliveries shall (unless the contract provides otherwise) be accepted within two months of the specified first delivery or available date.

Where delivery is to be made by installments the seller reserves the right to tender a separate invoice in respect of each installment. Each delivery shall constitute a separate contract.

(b) In the event of you or your customer failing to accept any delivery or deliveries tendered in accordance with your order within seven days of notification by us that the goods are ready for dispatch, you shall also be liable thenceforward for all expenses incurred by us in handling and storing the goods which are ready for delivery in pursuance of this order. All such goods will be held at customer's risk from that date.

(c) Without prejudice to (b) hereof, if after fourteen days from the expiry of the seven days period mentioned in (b) you have still failed to accept delivery of the goods we will be free to resell or otherwise dispose of the goods without prejudice to any rights we may have against you for breach of contract otherwise.

(d) Where contracts involve more than one delivery if default is made in payment or acceptance on due date in respect of any one delivery, we will at our option, and without prejudice to any rights we may have hereunder or otherwise, be entitled to treat the contract as repudiated and to claim damages accordingly, but any failure or defect in any one delivery on our part shall not vitiate the contract as to the remaining deliveries.

(e) While we will make every effort to effect deliveries as soon as goods are ready in accordance with re-arranged dates, no guarantee is to be implied as to delivery dates nor will we accept liability for loss or damage occasioned by delay in delivery however caused.

(f) We reserve the right to complete delivery at any point suitable for our vehicles within the main entrance of the site or building specified.

4 - Material Supplied on Behalf of the Buyer. Where material or other property is supplied to us by you or on your behalf (whether owned by you or not) to be held by us for the purposes of this contract we accept no responsibility for loss of or damage to such material or property, howsoever and whensoever occurring, nor for imperfect work caused by defects in, or the unsuitability of any materials or property so supplied.

5 - Quantity Variations. A shortage or surplus charged pro rata not exceeding 10 per cent will be considered due execution of the contract unless otherwise specifically agreed in writing.

6 - Claims.

(a) Where delivery is made by us to a carrier for transmission to you or your nominee, you must notify both us and the carrier in writing of any non-delivery or short delivery by the carrier or damage in transit, within such time as will enable the claimant to comply with the time limits currently laid down by the carrier for notification of claims.

(b) We shall not be liable in respect of consequential loss or damage, nor in respect of conditions or warranties, whether express or implied at statute or at common law, which have not been confirmed by us in writing.

(c) We shall not be liable in respect of any kind of claim or complaint against us unless you notify us thereof in writing within seven days of delivery to you of the goods (or, in the case of non-delivery within twenty eight days of the agreed delivery date) and we shall have the option of replacing or crediting the value of the goods in respect of which any kind of claim is made, thereby fully discharging all legal liability in respect thereof.

(d) Return of goods after delivery will not be accepted unless we or our representative have first had an opportunity of examining them.

(a) You will be liable to indemnify us against all expense, loss or damage suffered by us as result of false trade descriptions, or of claims for infringement of patents, trade marks, registered designs or copyright arising out of work done to your direct instructions.

7 - Risk. All risk in the goods will pass to you immediately on delivery of the goods to you or to your order.

8 - Property in Goods

(a) So long as any money owing to us from you is outstanding in respect of any goods sold subject to these Conditions, the property in any goods sold subject as aforesaid and delivered by us to you or to your order will not pass to you and we will retain legal ownership of all such goods until all such indebtedness has been discharged.

(b) We shall have the same rights as under (a) hereof to claim for any such indebtedness from you to us, should any of the said goods be converted into, or made a component part of, other goods ('converted goods'). Until all such indebtedness is discharged we shall have the same rights of legal ownership in all converted goods as we had in the said goods converted into or forming part of them.

(c) Until all such outstanding money is paid you will hold the goods delivered by us to you or to your order and/or any converted goods in a fiduciary capacity on our behalf, and should any such goods be resold by you you shall hold the proceeds of such sale in a like fiduciary capacity on our behalf until the total amount of your indebtedness to us shall have been discharged.

(d) With regard to any of the goods mentioned in (a) (b) or (c) hereof so long as we have legal ownership thereof in accordance with this Condition we may (without prejudice to any other rights we may have) recover or resell the said goods or any of them and may enter upon your premises by our servants and agents for that purpose, at any time after the credit period has passed or immediately upon or at any time after the commencement of any act or proceeding involving your solvency, and may if necessary detach or remove the goods from any other goods.

9 - Other Conditions of Sale. By ordering any goods from us you will be deemed to have accepted that these Conditions take precedence over any other Conditions either written or oral received by us in connection with the goods so ordered and that any such other Conditions will not form part of the contract between us for the sale of such goods.

10 - Governing Law. The interpretation and performance of these Conditions will be governed by the law of England.

11 - Contingencies. No liability will be accepted for any failure of or delay in, performance which is due wholly or partially to restrictions by Government or other competent authority, strikes, lock-outs, failure in our anticipated supplies of raw materials or to any other cause whatsoever beyond our control but where we can fulfill individual contracts in full but are prevented or hindered by force majeure from fulfilling all our contracts in full, we will be entitled to distribute such goods as we have available, among our contract customers in such proportions as we may decide and we shall not in such circumstances be liable for failure to fulfil any such individual contract.

12 - Regulations. We shall not be liable for any loss or damage whatever which may be occasioned by reason of the goods supplied not conforming to the Building Regulations or any other statutory regulations, nor the liability under the Health and Safety at Work Act 1974 to a use of the goods by you which has not previously been notified by you to us and approved by us in writing before such use.

13 - Equipment Hire. It is the responsibility of the hirer to insure the equipment the subject of any hire agreement.

The hirer agrees to pay to David Smith St. Ives Limited the Company the full replacement cost of any equipment which is lost stolen or damaged beyond economic repair or the cost of any repair without any deduction. All monies received by the hirer from an Insurance Company or from any other source in settlement of any claim relating to the loss theft or damage of any equipment shall be held on trust by the hirer for the company to the extent that any payment is due to the Company under this condition and shall pay the same to the Company on demand.

These conditions supercede all previous conditions of sale.