

CELL LIMITED

CONDITIONS OF SUPPLY OF GOODS AND SERVICES

1. Application:

- (a) These Conditions of supply of goods and services of Cell Limited (Cell) govern all orders to and contracts with Cell for the supply of goods and services except where they are varied by Cell in writing.
- (b) No alteration or modification of these Conditions shall have effect unless such alteration or modification is accepted in writing by a duly authorised officer of Cell.

2. Prices:

Cell reserves the right to vary its prices without notice and unless otherwise agreed in writing prices shall be those ruling at the date of delivery. Quotations expressed to be Fixed Price quotations specifically exclude any increases in Cell's prices that may be occasioned by the increase or imposition of any duty or tax or by adjustments or alterations in currency rates of exchange.

3. Delivery:

- (a) All delivery dates or periods given by Cell whether before or after acceptance of the order are given in good faith but Cell shall be under no liability whatsoever for any failure or delay in despatch or delivery nor for any loss or damage arising in connection therewith.
- (b) Should despatch or delivery of the goods or part of them be delayed or prevented from any cause whatsoever beyond Cell's control or for a reason attributable to the Customer or its customers or agents then, at Cell's option and without any liability therefore either the contract or any unfulfilled part thereof may be terminated or Cell may extend the time for delivery until a reasonable period after such cause shall have ceased in which event the Customer shall be responsible for all storage and other costs incurred by Cell in connection therewith. Any termination shall not prejudice the rights and obligations of either party in respect of any part of the contract already completed.
- (c) Unless otherwise agreed delivery shall take place at the works of the Customer or at a site nominated by the Customer or on a hard road as close as possible thereto. The Customer shall be responsible for providing labour and facilities at the delivery point for the unloading of goods ordered by him and shall indemnify Cell against all claims whatsoever arising from such unloading operations. Cell reserves the right to its drivers and carriers to refuse to take their vehicle on to a nominated site if in the opinion of the driver or carrier the site conditions are such as to constitute a danger, to vehicles, the goods or to any persons or property.
- (d) Should any goods be despatched by rail at Cell's option any charge made by a rail operator shall be the liability of the Customer.

4. Property and Risk:

- (a) The risk in the goods shall pass to the Customer when Cell delivers the goods in accordance with the terms hereof whether to the Customer or to any other person authorised by the Customer to accept the goods. Immediately on delivery the Customer shall insure the goods for their full invoice value at the Customer's expense.
- (b) Notwithstanding delivery the goods sold hereunder shall remain the property of Cell (who shall retain the right to dispose thereof) until Cell has received payment in full of all sums which are or may hereafter become due from the Customer to Cell in respect of the goods or in respect of any presently existing contract between the parties or in respect of any contract hereafter entered into between the parties to the extent that payment thereunder is due before the due date of payment for the goods hereunder.
- (c) Until the property in the goods passes to the Customer in accordance with sub-clause (b) above:
- (i) the relationship between Cell and the Customer shall be that of bailor and bailee
- (ii) the Customer agrees to store the goods in such a way that they are readily identifiable as the property of Cell.
- (iii) the Customer shall have the authority to sell the goods to its customers and in the event of such sale or otherwise disposing of them it is hereby agreed that any sub-sale or disposal shall be deemed to be made on behalf of Cell (but without imposing any liability on Cell to such sub-purchaser) and the Customer shall hold the proceeds of sale or rights arising therefrom against the sub-purchaser on behalf of Cell until such time as the Customer shall have made full payment for such goods and immediately upon such sale or disposal the property rights of Cell shall pass to the Customer on condition that he ensures that the sub-purchaser pays the purchase price into a separate bank account in the name of the Customer.
- (iv) The Customer is authorised to use the goods in any manufacturing or other process in the normal course of its business but upon so doing the Customer shall set aside the price of the goods so used in a separate account as aforesaid.
- (d) If payment in respect of any of the goods is overdue in whole or in part or immediately upon commencement of any proceedings relating to the Customer's solvency Cell may recover and/or resell the goods or any part of them and may enter upon the Customer's premises by its servants or agents for that purpose.
- (e) Nothing in this condition shall confer any right on the Customer to return the goods supplied by Cell or to refuse or delay any payment for them.
- (f) Cell reserves the right exercisable at its option by notice in writing to the Customer to waive the provisions of sub-clause (b) above at any time before payment has been made for the goods supplied and then declare that property in the goods shall have passed to the Customer.
- (g) Notwithstanding that property in the goods shall not have passed to the Customer, Cell as well as pursuing any other remedies available to it may sue for the monies due in respect of the goods supplied.

5. Payment and Lien:

- (a) Unless otherwise agreed or specified by Cell in writing, payment for the goods or services shall be made strictly 30 days after the date of delivery or in the case of approved monthly accounts by the end of the month of delivery.
- (b) If payment is not made on or before this date, Cell will exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- (c) Where payment is to be made by instalment the failure of the Customer to pay any instalment in due time shall entitle Cell to treat such failures as a repudiation of the whole contract by the Customer and (without prejudice to any other right) to recover the damages for such a breach of contract.
- (d) Cell shall have a general lien upon any goods of the Customer in its possession for any sum for the time being due to Cell from the Customer.

6. Cancellation

Once an order has been duly accepted by Cell, cancellation by the Customer will only be accepted at the sole discretion of Cell and Cell shall be indemnified against all charges for work carried out and for expenses incurred relating to the order prior to acceptance of the cancellation and against any loss (including loss of profit) which may be occasioned by such cancellation.

7. Suspension or Termination of Contract:

- (a) If the Customer shall, in the sole opinion of Cell be unable or likely to be unable to pay any sums owed to Cell, Cell shall (without prejudice to any other rights) be entitled to demand security prior to delivery or the carrying out of any service either by advance payment in cash or by bank guarantee or other security notwithstanding any terms of payment previously agreed and in the event that the Customer is unable to provide such security the Customer shall be deemed to have repudiated the Contract and Cell shall be entitled to delay delivery of goods indefinitely or refuse to commence any services or accept the repudiation of the contract without liability.
- (b) If the Customer commits any breach of the Contract or if any distress of execution be levied or be attempted to be levied upon the Customer or his property or if the Customer shall make or offer to make any arrangement with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy be presented or made against him or if the Customer is a company a receiver be appointed over all or any of its assets or if a winding-up order be made against the Customer or if the Customer goes into liquidation (otherwise than for the purpose of reconstruction or amalgamation), Cell shall without prejudice to any other rights and remedies it might have and without any liability have the right immediately, by notice in writing to:
- (i) Suspend or terminate any contract or any unfulfilled part thereof, and
- (ii) Stop delivery of goods and
- (iii) Call for immediate payment of all monies owing to Cell.

8. Storage etc.

All goods and materials supplied to the Customer hereunder shall be stored and used in accordance with the manufacturers instructions and recommendations and Cell shall be under no liability for any loss or damage which may arise as a result of the failure to adhere to such instructions or recommendations in all respects.

9. Liability

- (a) No condition is made or to be implied nor is any warranty given or to be implied as to the quality (merchantable or otherwise) or fitness of goods supplied or that they will be suitable for any particular purpose or for use under specific conditions, notwithstanding that such purpose of condition may be known or made known to Cell and accordingly there are excluded all conditions or warranties expressed or implied by statute, common law, trade usage or otherwise and Cell shall be under no liability to the Customer for any loss including consequential loss damage or injury or expense arising from a defect in the goods or from any cause whatsoever relating to the goods provided that Cell accepts liability for loss which directly arises from any injury to persons where and to the extent that such injury is proved to be caused by the negligence of Cell.
- (b) The Customer shall inspect all goods immediately upon delivery and in the event that the Customer alleges that the quality of goods does not correspond with the quantity stated in the delivery note or that such goods are defective he shall within three days of delivery give to Cell notice in writing specifying particulars of his complaint.
- (c) In the event that the customer shall fail to give such notice as aforesaid Cell shall have no liability in respect of any alleged non delivery of goods or defects therein which should have been apparent on a reasonable visual inspection at the time of delivery.

10. Force Majeure:

Cell may cancel any contract without prejudice to any other rights and remedies it may have and without any liability whatsoever if prevented from performing it owing to force majeure.

11. Miscellaneous

Any notice to be given by Cell or the Customer shall be sufficiently given if posted by first class letter or delivered by hand to the other at the address set out in the contract. Every notice shall be deemed to have been received and given either forty-eight hours after posting or at the time of delivery. Cell shall be at liberty to enter into sub-contracts with third parties for the purpose of discharging its obligations under the contract. The contract and these conditions are governed by English Law and any dispute arising in relation to the goods supplied or the terms of the contract shall be determined by the English Courts to whose jurisdiction and decision Cell and the Customer submit.

12. Special Contract:

- (a) Ex Ship Sales: In addition to the provisions of Paragraph 3 hereof, orders are accepted subject to the Mills or other suppliers acceptance of the specification and further subject to the availability of the goods and freight space under separate Bill of Lading to the nearest port required.
- (b) Ex Warehouse Sales:
- (i) The Customer is responsible for all rental and other charges for goods not collected within 14 days of date of sale.
- (ii) For the purpose of Clause 4 hereof (property at risk) delivery of the goods shall be deemed to have been made on the date of the sale.