

CONDITIONS OF SALE

1. GENERAL

- 1.1 The Company means PROCTER BROS. LIMITED and "the Customer" means the person, firm or company to whom a quotation is addressed or whose order is accepted by the Company and "the goods" means the goods the subject of such quotation or order.
- 1.2 All prices quoted by the Company are based upon these Conditions of Sale and reflect the limitations upon the Company's liability which they contain. These Conditions of Sale supersede and shall be taken to override any terms or conditions proposed or stipulated by the Customer.
- 1.3 No agent or salesman of the Company has authority to give any guarantee or warranty on behalf of the Company or to transact business other than on the terms of these Conditions of Sale.

2. LIMITS OF CONTRACT

No binding contract is created until an order is accepted by the Company and all prior correspondence or oral communications are to be regarded as superseded and not forming part of the contract. Prices quoted are subject to revision for errors and omissions at any time.

3. TECHNICAL DATA

All drawings, descriptive matter, price lists or advertisements, whether or not supplied with a quotation or tender are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of the contract. The Company offers its designs and/or specifications for the Customer's approval. Unless designs and/or specifications are supplied by or approved by the Company, the Company undertakes no responsibility for sites or foundations, or for any framework or support, or for compliance with any local bye-laws or statutory regulations, or for the fulfillment of any special requirements which the Customer may be bound to observe or fulfil. It shall be the responsibility of the Customer to inform the Company of all relevant information regarding the proposed location and use of goods supplied by the Company.

4. TITLE

The implied undertakings as to title etc. set out in Section 12 of the Sale of Goods Act 1979 shall be express terms of the contract between the Company and the Customer.

5. PRICE

- 5.1 Unless otherwise agreed the Company will sell the goods at the price specified in the Company's latest standard price list. Unless otherwise stated on the price list, the prices specified in the price list are ex-works prices and the Company reserves the right to charge all additional costs of delivery to the Customer. It is the responsibility of the Customer to ascertain any such additional costs of delivery at the time of placing its order.
- 5.2 Unless otherwise agreed, the cost of delivery of the goods to the Customer includes delivery to the point of off-loading. Off-loading from the Company's (or its haulier's) vehicle is the responsibility of the Customer. The Company reserves the right to charge the Customer for any additional costs incurred by the Company due to delay or inability of the Customer to off-load the goods on delivery. It is the responsibility of the Customer to notify the Company at the time of placing its order if it requires the Company to off-load the goods in which case the costs of delivery quoted by the Company shall include the cost of off-loading.
- 5.3 If a quotation or tender has been submitted by the Company it will accept orders at the price stated in that quotation or tender provided that the orders are received within the time limit specified in the quotation or tender.
- 5.4 The price of the goods shall be subject to the addition of Value Added and other taxes and the cost of any special packing required by the Customer.
- 5.5 Any increase in costs or expenses arising from any act or omission or any special requirements (including delivery) of the Customer or any modifications made at the Customer's request may, at the Company's option, be charged to the Customer.

6. VARIATIONS TO SPECIFICATION

The Company reserves the right to substitute other components or materials of equivalent strength and quality when the components or materials specified are not readily available.

7. DELIVERY AND PASSING OF RISK

- 7.1 Any time or date for the despatch or delivery of goods whether specified in the Company's quotation or otherwise given by the Company shall be taken as an estimate made by the Company in good faith but shall not be binding upon the Company either as a term of the contract or otherwise. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to deliver within such time or by such date or in consequence of any other delay in delivery however caused.
- 7.2 Except where the Company has agreed to off-load the goods or except where otherwise agreed in writing, delivery shall be made and risk in the goods shall pass to the Customer immediately upon the goods being made available for off-loading at the Customer's site or premises or, where the Customer is collecting the goods from the Company's premises, delivery shall be made and risk in the goods shall pass when they are made available for loading onto the Customer's transport at the Company's premises. Any loss or damage to the goods during loading or off-loading at the point of delivery shall be the responsibility of the Customer except where the Company has agreed to off-load the goods at the Customer's site or premises in which case delivery shall be made and risk in the goods shall pass to the Customer immediately upon off-loading.
- 7.3 The Company may deliver the goods in instalments and invoice the Customer as if each instalment comprised a separate contract upon the terms of these Conditions of Sale.
- 7.4 If delivery of the goods is delayed through any act or omission of the Customer, the Company may put the goods into storage at the Customer's risk and expense.
- 7.5 It shall be the Customer's responsibility to ensure that the point of delivery at the Customer's site or premises is accessible by hard roads that are safe and able to receive heavy loads. The Company reserves the right to:-
 - 7.5.1 charge any additional costs to the Customer; and/or
 - 7.5.2 make delivery at a point other than the point of delivery specified by the Customer if the point of delivery specified by the Customer is not accessible by suitable hard roads.
- 7.6 The Company shall not be obliged to make delivery to more than one point of off-loading at the Customer's site or premises, unless otherwise agreed.
- 7.7 Except where the Company agrees to off-load the goods, on delivery to the Customer's site or premises, the Customer shall be responsible for providing all equipment and labour to off-load the goods and shall off-load the goods promptly. The Company reserves the right to charge all additional costs to the Customer where off-loading is delayed for any reason other than the Company's default.

8. INSPECTION AND LOSS OR DAMAGE IN TRANSIT

- 8.1 Subject to Condition 8.2, the Customer shall be responsible for inspecting and checking the goods on delivery and, where delivery takes place at the Customer's site or premises, prior to off-loading. The Company reserves the right to charge all additional costs to the Customer if goods are rejected after off-loading where the cause of rejection was ascertainable prior to or during off-loading.
- 8.2 The Company shall not in any event be liable for any loss of or damage to the goods whilst in transit unless written notice thereof is given to the Company by the Customer stating the nature of any loss or damage onto the delivery note at the time of delivery (provided that if the Customer proves (i) that it was not reasonably possible for him to give such notice to the Company within the appropriate period and (ii) that notice was given within a reasonable time the Company shall not be entitled to rely on the time limits stipulated by this Condition).
- 8.3 The Company shall not in any event be liable for any loss of or damage to the goods where the goods are transported by an outside freight carrier unless the Customer has complied in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 8.4 Any liability which the Company may incur for loss of or damage to the goods whilst in transit shall in no case exceed the invoice value of the goods and in no circumstances shall the Company be liable for any indirect or consequential loss however caused.

9. PAYMENT

- 9.1 All accounts shall be paid on or before delivery of the goods unless otherwise agreed in writing. Where the Company has agreed to extend credit facilities to the Customer, accounts shall be paid at the Company's registered office on or before the last day of the month following the date of the Company's invoice. Cheques and money orders shall be made payable to or to the order of the Company. Any early settlement discount shall only apply if agreed in writing by the Company and if the Customer settles its account within the agreed period and no other sums due to the Company are overdue.
- 9.2 The Company shall be entitled to charge interest on all overdue accounts at a rate of 2 per cent per month on the outstanding balance (both before and after judgement).
- 9.3 Notwithstanding Condition 9.1 the Company shall without prejudice to its other rights have the right by notice in writing to the Customer to demand immediate payment of all monies due from the Customer to the Company for any goods delivered at any time.
- 9.4 If payment of any account shall not take place on or before the date for payment specified in Condition 9.1 or 9.3 (as appropriate) or if the Company's rights under Condition 11 shall become exercisable, any trade discount which the Company shall allow the Customer on the full quoted price shall forthwith cease to apply and the full quoted price shall be due and payable by the Customer to the Company.

10. PASSING OF PROPERTY

- 10.1 The goods shall remain the sole and absolute property of the Company until such a time as the Customer shall have paid to the Company the price for the goods together with the price of any other goods the subject of any other contract with the Company.
- 10.2 The Customer acknowledges that the Customer is in possession of goods solely as bailee for the Company until such time as the price thereof is paid to the Company together with the price of any other goods the subject of any other contract with the Company.
- 10.3 Until such a time as the Customer becomes the owner of the goods, the Customer will store them on his premises separately from the Customer's own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Company.
- 10.4 The Customer's right to possession of the goods shall cease if he, not being a company, commits an available act of bankruptcy or if it, being a company shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a petition is presented or other steps are taken for the winding-up of the Customer or for the making of an administration order. The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 10.5 Subject to the terms hereof the Customer is licensed by the Company to agree to sell the Company's goods, subject to the express condition that such an agreement to sell shall take place as agents and bailees for the Company whether the Customer sells on his own account or not and that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's monies.
- 10.6 If the Customer has not received the proceeds of any such sale, he will upon being called upon so to do by the Company, within seven days thereof assign to the Company all rights against the person or persons to whom the Customer has supplied the goods.

11. SUSPENSION OR CANCELLATION OF DELIVERIES

- 11.1 If the Customer shall fail to pay to the Company on the due date any sum payable hereunder, or if the Customer's right to possession of the goods shall cease in accordance with Condition 10 the Company may, without prejudice to its other rights, demand immediate payment by the Customer of all unpaid accounts and suspend further deliveries and cancel this and any other contract between the Company and the Customer without any liability attaching to the Company in respect of such suspension or cancellation and debit the Customer with any loss sustained thereby.
- 11.2 If the Customer cancels his order the Company shall be entitled to recover any loss sustained thereby from him.

12. GUARANTEE

Subject to Condition 17, the Company undertakes at its option either to repair, replace or refund the price of any goods which are shown to be defective in materials or workmanship within twelve months of delivery provided that the Company shall be under no liability under the said guarantee if (a) the Customer has not paid in full for the goods or (b) the Customer has executed or attempted to execute repairs or alterations to the goods which are not authorised by the Company or has failed in any other respect to adhere strictly to the terms hereof or (c) the Company has not been notified of any defect within one month of the defect becoming apparent or (d) the Customer has mishandled or misused the goods.

13. EXCLUSION OF LIABILITY

- 13.1 Subject to Condition 17, the Company's guarantee is provided by the Company and accepted by the Customer in substitution for all express or implied representations conditions and warranties statutory or otherwise as to (a) the state quality fitness for purpose or performance of the goods and (b) the standard of the Company's workmanship and the state quality fitness or performance of any materials used in connection therewith and all such representations conditions and warranties are hereby expressly excluded.
- 13.2 Subject to the terms hereof the Customer is licensed by the Company to agree to sell the Company's goods, subject to the express condition that such an agreement to sell shall take place as agents and bailees for the Company whether the Customer sells on his own account or not and that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's monies.

14. LIEN

The Company shall have a general lien in respect of all sums due from the Customer upon all goods to be supplied to such Customer or upon which work has been done on the Customer's behalf and, upon 14 days' written notice to the Customer, may sell such goods and apply the proceeds towards the satisfaction of the sums due to the Company.

15. FORCE MAJEURE

If the performance of the contract by the Company shall be delayed by any circumstances or conditions beyond the control of the Company the Company shall have the right at its option (a) to suspend further performance of the contract until such time as the cause of the delay shall no longer be present or (b) to be discharged from further performance of and liability under the contract and if the Company exercises such right the Customer shall thereupon pay the contract price less a reasonable allowance for what has not been performed by the Company.

16. SEVERANCE

If any condition herein shall be deemed void for any reason whatsoever, but would be valid if part of the wording thereof were deleted any such condition shall apply with such modifications as may be necessary to make it valid and effective.

17. "DEALS AS CONSUMER"

Nothing in these Conditions shall affect the statutory rights of a Customer who in relation to the Company "deals as consumer" as defined in Section 12 of the Unfair Contract Terms Act 1977 or any amendment or modification thereof.

18. RETURN OF GOODS

Goods can only be returned for credit with the prior written permission of the Company. The Customer shall pay a sum to the Company equal to 15 per cent of the price of the goods returned by way of a handling charge together with all costs of return carriage.

19. LEGAL CONSTRUCTION

This contract shall be construed in accordance with English Law and shall be subject to the jurisdiction of the English Courts.