

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

- "Buyer" means the person who agrees or has agreed to purchase the Goods or whose order for the Goods is accepted by the Seller
- "Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to sell or supply to the Buyer
- "Seller" means FA Supplies Limited
- "Conditions" means the standard terms and conditions of sale and/or supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller
- "Contract" means each contract for the sale and/or supply of Goods between the Buyer and the Seller includes telex, cable facsimile transmission e-mail and comparable means of communication
- "Writing" means any document, including any electronic communication
- "The Intellectual Property Rights" and design rights including (without limitation) patents, trademarks or trade names, copyright, registered designs, design right, business names, inventions, trade secrets, and confidential information.

- 1.2 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
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller, subject to these Conditions, which shall govern the Contract
- 2.2 These conditions shall override any terms or conditions which the Buyer purports to incorporate into the Contract. No variation to these Conditions shall be binding unless agreed in Writing by the authorised representative of the Seller
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller 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 Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 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 Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

- 3.1 The quotations and estimates of the Seller are without commitment and no order submitted by the Buyer shall be binding on the Seller unless (expressly or impliedly) the Seller accepts it and any action taken by the Seller pursuant to such order shall be taken as the Seller's acceptance of such order on these Conditions.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The Seller shall be under no obligation to acknowledge receipt of any order and may execute the order without further reference to the Buyer
- 3.4 Except where the Seller specifically otherwise agrees in Writing, the selection and choice of the Goods and (except as to compliance with specific technical specifications contained in the Seller's current literature) the assessment of the Goods' suitability and fitness for the Buyer's purpose is the Buyer's sole responsibility.
- 3.5 Any specifications, formulations, data, literature and statements as to content, suitability, performance or otherwise, issued, and descriptions and samples given, by the Seller in connection with the Goods are offered in good faith but are intended to be approximate only and shall be deemed not to constitute representations.
- 3.6 Goods are sold or supplied on condition that the Buyer undertakes at all times to take and comply with (and to draw to third parties' attention and require them to take and comply with) all instructions and recommendations issued with or contained on or relating to the Goods or the Seller's relevant data sheets, and all responsible and prudent precautions, as to use, maintenance, storage cleaning and disposal and otherwise.
- 3.7 Pursuant to the Seller's policy of continuous improvement or pursuant to changes which may be made in safety or other statutory requirements the Seller reserves the right without notice and without affecting the validity of the Contract, to make such changes in materials, dimensions and design as the Seller thinks reasonable or desirable in all the circumstances.
- 3.8 The copyright and all patent and other industrial property rights in the Seller's designs, data sheets, packaging and literature shall remain the Seller's property and no licence thereunder (except as to the use for which the Goods are sold or supplied) shall be implied.
- 3.9 Subject to the provisions to the contrary contained in these Conditions, and subject to any stipulations specifically made by the Seller prior to the Contract sections 13 to 15 (inclusive) Sale of Goods Act 1979 shall apply.
- 3.10 The Buyer shall not at any time alter or deface the Seller's name or any of the Seller's trademarks or juxtapose with any other mark likely to cause confusion or use them or any mark likely to cause confusion either on or in connection with any services or goods other than the Goods in the form supplied by the Seller or as, or as part of, any name or trading style.
- 3.11 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller 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 Seller's use of the Buyer's specification.
- 3.12 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller (which may be withheld for any reason whatsoever) and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

4. Price of the goods

- 4.1 Subject to the provisions of this Condition 4, the price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller 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 Seller of supplying the Goods, (including without limitation, any foreign exchange fluctuation, currency regulations, alteration of duties, increase in the costs of labour, materials or other costs of manufacture or increase in the costs of carriage and insurance) 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 Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance and all customs duties and other costs of importation into the country of delivery. The Buyer shall be responsible for obtaining all licences relevant to the sale and delivery of and payment for the Goods (delivery being subject to the Buyer obtaining such licences).
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of Payment

- 5.1 Unless the Seller otherwise agrees in Writing the Seller's terms of payment are that each of the Seller's invoices is payable in full in accordance with the terms agreed in Writing notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.2 If the Buyer fails to make payment of the amount due in full on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.2.1 cancel the Contract or suspend any further deliveries to the Buyer;
- 5.2.2 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 Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.2.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank plc base rate from time to time, from the due date until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.3 The Seller reserves a lien on all property or money of the Buyer in the possession of the Seller for all amounts due or accruing on any account; the Seller may sell property which is subject to lien if it is not satisfied in 30 days and apply the proceeds to discharge the lien and Sale expenses.

6. Performance and Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods or performance of the Contract by the Seller are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Contract howsoever caused. Time for delivery or performance by the Seller shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered or the Contract performed by the Seller in advance of the quoted delivery date upon.
- 6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Goods are delivered in instalments either in accordance with the Contract or, with reasonable justification, as a departure therefrom, each delivery shall constitute a separate contract and failure by the Seller 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.

- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may at its own discretion:

- 6.5.1 charge the Buyer for the Seller's abortive delivery costs and may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and/or
- 6.5.2 if the nature of the goods allows and if possible 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 under the Contract or charge the Buyer for any shortfall below the price under the Contract; and/or
- 6.5.3 Treat the contract as terminated and pursue the Buyer as a debtor in the usual way.

7. Risk and Property

- 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 Seller's premises, at the time when the Seller 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 Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and/or 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 Seller 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 Seller 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 Seller'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 Seller'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 Seller 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 moneys 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 have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller in respect of the Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties

- 8.1 The Seller warrants (subject to the limitations set out in Conditions 8.2 and 9 below) that if Goods of the Seller's own manufacture (but excluding constituent parts of the Seller's suppliers or sub-contractors) or provided by the Seller prove under normal conditions not to be free from defects in workmanship and if the conditions set out below are each satisfied the Seller shall (at its election) repair or replace free of charge any Goods (or the relevant constituent parts not being expendable items) which in any such case the Seller shall find upon examination (for which the Buyer will provide full facilities) to have been so defective. The said conditions (each of which must be fulfilled before any warranty claim shall arise) are:
- 8.1.1 that the claim is not attributable to fair wear and tear or any fault or damage arising from impact, modification, inappropriate use or treatment, incorrect handling or exposure to corrosive substances or substances otherwise injurious to the Goods or their constituent materials;
- 8.1.2 that the claim is made by the Buyer as the Seller's original customer for the Buyer's own benefit;
- 8.1.3 that the claim is notified (in detail) in writing to the Seller within 30 days of the date of discovery thereof and in any event within 12 months of delivery;
- 8.1.4 that the Seller's recommendations for maintenance and storage use in respect of its Goods have been complied with.
- 8.2 Except where the Seller specifically otherwise agrees in Writing, the Seller offers no (and shall have no liability under any) warranty or condition (express or implied) in respect of goods, materials or services of its suppliers or sub-contractors but the Seller will, if requested by the Buyer (and if the Seller considers it appropriate and practical to do so) assist the Buyer to obtain the benefit of such warranties as are available from them in favour of first users or goods or services.
- 8.3 The Buyer warrants to the Seller that:
- 8.3.1 the Buyer is the sole owner of the Intellectual Property Rights in any materials supplied for copying or other purposes and has full power to give the warranties and indemnities contained in these Conditions
- 8.3.2 the materials will contain nothing blasphemous libellous or otherwise unlawful and the exploitation of the Intellectual Property Rights by the Seller will not infringe the copyright or any other rights of any third party
- 8.3.3 the Buyer will keep the Seller fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by the Seller on the advice of its legal advisers to compromise or settle any claim) and all legal costs or other expenses arising out of any breach of any of the above warranties or out of any claim by a third party based on any facts which if substantiated would constitute such a breach.

9. Limitation of Liabilities and Indemnity

- 9.1 The Seller maintains public and product liability insurance to a limit of not less than £1,000,000.00 (One Million Pounds) in respect of any one occurrence and copies of the policy or policies are available for inspection at any time.
- 9.2 Nothing in these conditions shall apply to exclude or restrict any liability which under sub-sections 2(1), 6(1), 6(2) or 7(2) of the Unfair Contract Terms Act 1977 or section 7 of the Consumer Protection Act 1987 cannot in the circumstances be excluded or restricted.
- 9.3 Where the Goods are sold or supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.4 Subject to 9.3 and 9.4 above where loss or damage arises from breach of contract, negligence, misrepresentation or otherwise neither the Seller nor its employees or agents (on whose behalf the Seller contracts for the purposes of this condition 9) shall be under any liability to the Buyer or to third parties:
- 9.4.1 for any loss of profit or consequential loss or damage however arising; or
- 9.4.2 to any extent greater or other than the cover available to the Seller under the policy or policies referred to in 9.1 above (after such cover has been applied in meeting any such liability as is mentioned in 9.2 above as may be covered thereby).
- 9.5 The Seller 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control and in such circumstances the Seller may cancel or suspend performance of the Contract. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 9.5.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.5.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.5.4 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.5.5 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.5.6 power failure or breakdown in machinery.
- 9.6 The Seller's pricing structure is based upon these limitations of liabilities and indemnities and the Buyer is advised to consider obtaining insurance cover for any claims for which the Seller is (pursuant to this condition or otherwise) not liable and for any indemnity liability which may arise under this condition. Alternatively, the Seller will (upon the Buyer's request in Writing) use reasonable endeavours, at additional cost to the Buyer, to obtain additional insurance cover.

10. Insolvency of Buyer

- 10.1 This clause applies if:
- 10.1.1 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
- 10.1.2 an encumbrancer takes possession, or a receiver administrative receiver or administrator is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller 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.

12. General

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the 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.
- 12.2 No waiver by the Seller 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.
- 12.3 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 provisions in question shall not be affected thereby.
- 12.4 The Contract shall be governed by the laws of England and the parties submit to the non exclusive jurisdiction of the English Courts.