

IBP CONEX LIMITED TERMS AND CONDITIONS OF SALE

1. GENERAL

All quotations must be given and all contracts must be concluded by IBP Conex Limited ("the Company") in writing, or in electronic form through the Company's Electronic Data Interchange ("EDI"). These conditions shall apply to all quotations and contracts for the sale or supply of goods ("the Goods") made between the Company and the recipient ("the Purchaser") of the Goods unless expressly varied or excluded in writing signed by one of the Company Directors. Unless expressly agreed in writing by authorised representatives of both parties, these conditions and any quotation given or contracts entered into constitutes the entire agreement, and any terms and conditions contained in the Purchaser's order or otherwise shall not apply. If any of these conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject, it shall be so void and unenforceable to that extent and not further.

2. ACCEPTANCE

- All orders are accepted on the understanding that these conditions apply to the exclusion of all other terms and conditions which the Purchaser may purport to apply under any purchase order, confirmation of order or similar document.
- Orders accepted cannot be cancelled without the Company's written consent and on terms which will indemnify the Company for all loss.
- Unless specifically agreed otherwise by the parties, all EDI orders shall be deemed to be accepted when acknowledged by the Company through the EDI. Orders made through the EDI shall only become binding upon acknowledgement of receipt of order given by the Company and the Company's terms and conditions shall apply.

3. DELIVERY

- The Company, whilst making every effort to effect prompt delivery, will not unless otherwise agreed in writing signed by a Director of the Company, be liable for loss or damage occasioned by delay in despatch or delivery however caused and time of delivery shall be of essence and any dates expressed in the contract or quotation are given subject to this condition. Delivery of the Goods shall take place:-
- Where the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's vehicle or that of the carrier at the station, port or location specified by the Purchaser, or
 - Where the Purchaser undertakes delivery of the Goods, when the Goods are loaded onto the Purchaser's vehicle, or that of his designated carrier at the Company's premises or other pre-arranged location.

4. PRICES

- Unless otherwise stated in the contracts, all prices in quotations and contracts are exclusive of VAT and apply to Goods packed in standard packs. Deliveries to the value of £250 sterling or more will be made carriage paid to any premises of the Purchaser in the United Kingdom, save that the cost of Goods consigned at the Purchaser's request by passenger train, special carrier service or air freight, will be charged extra. Deliveries to premises other than the Purchaser's are subject to a surcharge to cover carriage costs with a minimum charge of £35 sterling. No allowance will be made for carriage costs where Goods are collected by the Purchaser, or his agents, from the Company's premises.
- The Company reserves the right to impose a minimum order charge of £25 sterling on any order placed with a value less than £250 sterling to cover minimum administration and carriage costs to the Purchaser's premises in the UK (excluding delivery to site). Passenger train charges, special carrier services or air freight are charged in addition to the above.
- Where FOB orders are valued at less than £750 sterling, the Company reserves the right to charge extra for packing and delivery charges. Special notice is directed to the fact that in accordance with the Sale of Goods Act 1979, section 32, as amended from time to time, a delivery to the carrier is in such circumstances delivery to the Purchaser.
- All prices C&F and CIF include freight charges up to the destination specified. The Company reserves the right to refuse orders for less than £1,500 sterling C&F value or to charge extra for any additional expenses incurred. No provision is made for despatch by air freight or parcel post, any such charges incurred are payable by the Purchaser.
- All prices are subject to alteration without prior notice and all orders are accepted on the understanding that they will be invoiced at prices ruling at the day of despatch. The Purchaser will pay such prices as so invoiced.
- Any matter apart from the supply of Goods such as special packing tests or inspections, samples or other impositions shall be charged extra to the Purchaser.
- All quotations made in currencies other than sterling are based on current exchange rates and the Company reserves the right to amend these in the event of changes in the rates of exchange.
- All CIF and C&F prices are based on the current freight rates and the Company reserves the right to amend these in the event of changes in freight rates at the time of shipment.
- All packing specifications are estimated and subject to possible alteration in the event of an order.

5. PAYMENT

- The price for Goods shall be payable not later than 30 days after the last day of the month in which the Company delivers the Goods. If payment is not made by the due date the Company reserves the right to suspend deliveries on this or any other contract with the Purchaser.
- Where the contract is or may be fulfilled in separate instalments deliveries or parts, payment for each such instalment, delivery or part shall be made under sub-clause (a) above as if the same constituted a separate contract.
- Should the Purchaser fail punctually to comply with the terms of payment, the Company shall be entitled to interest on any amount outstanding from the due date until the actual date of payment at the rate of 1% above the National Westminster's Bank Base Rate in force from time to time, unless otherwise stated by the Company in writing at the time of ordering.

6. RISK AND PROPERTY IN THE GOODS

- Risk of damage to or loss of the Goods shall pass to the Purchaser at the time of delivery by the Company or collection by the Purchaser or, if the Purchaser wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- Notwithstanding delivery and passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Purchaser until the Company 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 Company to the Purchaser for which payment is due.
- Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall, at its own cost, hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property, but the Purchaser shall be entitled to re-sell or use the Goods in the ordinary course of business.
- Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been re-sold), the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the Goods are stored and re-possess the Goods.
- The Purchaser shall not make any modification to the Goods or their packaging or alter, remove or tamper with any marks, numbers or other means of identification on or in relation to the Goods.
- The Purchaser shall account to the Company for the proceeds of sale or otherwise the Goods whether tangible or intangible, including insurance proceeds and shall keep all such proceeds of sale or otherwise on trust for the Company and hold separate from any monies or property of the Purchaser and third parties and in the case of tangible proceeds properly stored, protected and insured provided that the Purchaser will have no authority to enter into any contract of sale or other contract on behalf of the Company and any such contract shall accordingly be concluded in the name of the Purchaser.
- The Purchaser 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 Company, but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

7. INSOLVENCY OF THE PURCHASER

Where any of the following occurs, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Purchaser, 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:

- The Purchaser makes any agreement or composition with its creditors or if a bankruptcy petition is presented or if the Purchaser enters into liquidation whether compulsorily or voluntarily; or
- An encumbrancer takes possession, or a receiver is appointed over the whole or any part of the Purchaser's assets or undertaking; or
- An administrator has been appointed to manage its affairs, business and property or if the Purchaser takes or suffers any similar action in consequence of debt or any similar events occur in any jurisdiction in which the Purchaser operates; or
- The Purchaser ceases or threatens to cease to carry on business; or
- The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.

8. UNDERTAKING AND EXCLUSION OF LIABILITY

- In the event of any defect being disclosed in any Goods or parts thereof supplied by the Company within 365 days from the date of delivery and the Company is notified in writing of such defect, the Company undertakes to consider any claim and examine the Goods or part thereof alleged to be defective and should any fault, due to defective materials supplied by or design or workmanship on the part of the Company, be found on such examination, to repair the faults, or at the Company's option to supply free of charge new goods or parts in place of those acknowledged by the Company to be defective.
- The above undertaking is limited to the repair of the defective Goods or parts without charge or the supply to the Purchaser free at the Purchaser's premises of the new goods or parts in exchange for any acknowledged by the Company to be defective. The decision of the Company on all claims and all questions shall be final and conclusive.
- The undertaking set out in (a) above shall apply to any repaired or replaced goods provided hereunder during the unexpired portion of the undertaking period applicable to the Goods for which the repair or replacement has been performed.

(d) Subject as expressly provided in these conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms which apart from this condition would be implied by statute or common law are excluded to the fullest extent permitted by law. Where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) the statutory rights of the Purchaser are not affected by these conditions.

(e) Neither the Company nor its officers employees and agents shall (except in respect of death or personal injury caused by the negligence of the Company its officers employees or agents and any liability which cannot be excluded under part 1 Consumer Protection Act 1987) be liable to the Purchaser by reason of any representation or implied warranty condition or other terms or any duty at common law, or under the express terms of the contract, for any injury and/or loss and/or damage of any kind whatsoever and however arising or arisen whether direct, indirect, consequential or special and however caused (whether occasioned by the negligence of the Company or its officers employees or agents or otherwise and including without limitation any loss arising out of the liability of the Purchaser to any third party by virtue of part 1 Consumer Protection Act 1987) resulting from or arising out of or in connection with the Goods (including without limitation any defect therein and/or any act or omission of the Company in connection therewith, except as expressly provided in these conditions).

(f) In no event will the Company be liable under any terms of or otherwise in connection with the contract for lost profits or any other incidental or consequential damages.

(g) The Purchaser shall indemnify the Company in full against any liability whatsoever (but excluding any liability based on the negligence of the Company its officers employees or agents) which it may incur resulting from any claim made against the Company by a third party in respect of any matter for which liability to the Purchaser is excluded by the foregoing provisions of this condition 8.

(h) Accordingly it shall be for the Purchaser to insure against any liability arising as a result of these conditions (including without limitation the operation of conditions (d) to (g) above).

9. CHECKING GOODS

Unless the Purchaser gives written notice to the Company within 14 days from the date of arrival of the goods at the Purchaser's premises or the destination agreed by the parties as the case may be that the Goods are not in conformity with the contract, the Purchaser shall be deemed to have accepted the Goods and shall be bound to make payment thereof on the due date.

10. SPECIAL GOODS

Where the Company supplies goods to the special requirement of the Purchaser the specification or description of which is outside the Company's usual range as set out in its catalogues the Company shall be entitled to supply the Purchaser 10% more or less of the quantity of such goods and to be paid for the quantity actually delivered. Any drawings supplied by the Purchaser shall become the property of the Company. Where part cost dies and tools are charged they are kept for the Purchaser's own use, but they remain the property of the Company and the Purchaser has no property in them. The Company reserves the right to consider obsolete, and to destroy, dies and tools from which no goods have been ordered for a period of three years.

11. INSPECTION

If tests are required to the Purchaser's own specification, such tests are to be carried out at the Company's premises and are to be final there, although if desired arrangements can be made for a representative of the Purchaser to observe such tests and inspection.

12. RETURNS

Goods once despatched may not be returned without the Company's consent in writing. Where such consent is given, credit will only be allowed at the price at which the Goods were originally charged less a minimum of 20% to cover re-stocking, clerical and other expenses. Goods returned must be in good condition, adequately packed and identified and sent carriage paid. If transport is arranged by the Company either on its own vehicles or carriers the cost will be deducted from the credit.

13. NOTIFICATION OF DAMAGE, PARTIAL LOSS ETC.

If the Goods or part thereof be damaged in transit or having been placed in transit have not been delivered to the Purchaser or as the Purchaser directed in writing:-

- Damage to or partial loss from a consignment must be notified to the Company and the carrier, other than on a delivery document, immediately after delivery and confirmed in writing within 3 days.
- Non-delivery of a consignment must be notified to the Company and the carrier in writing within 14 days of the date of despatch shown on the Company's invoice/advance note, whichever is the earlier, otherwise we reserve the right to charge for the costs ensuing from the delayed investigation.
- Non-delivery of a consignment despatched to a destination outside the United Kingdom must be notified to the Company and the carrier in writing within 60 days of the date of despatch shown on the Company's invoice, otherwise we reserve the right to charge for costs ensuing from delayed investigation.
- The Company is not responsible for any damage to or loss or non-delivery of the Goods if by reason of the Purchaser's failure to give notice of damage or loss or non-delivery the Company is thereby prevented from recovering compensation for such damage or loss or non-delivery from the carrier or its agent. In any event the Company shall only be liable to pay such compensation as it receives from the carrier.
- Where the Company has arranged marine insurance on behalf of the Purchaser, in the event of loss or damage, the terms and conditions stated on the insurance certificate must be strictly complied with.

14. INDEMNITY

The Company shall not be liable for and the Purchaser shall indemnify and hold the Company harmless against all claims by any person for infringement or alleged infringement of patents trademarks copyright or registered designs or otherwise arising directly or indirectly in connection with goods manufactured by or with work done by the Company on goods in accordance with Purchaser's specifications or with the siting or installation of goods.

15. HEALTH AND SAFETY AT WORK

It is the responsibility of the Purchaser to take such steps as are necessary to ensure that appropriate information relevant to the Goods is made available to any person to whom the Purchaser supplies them.

16. TERMINATION

Without prejudice to its other rights, the Company may by giving written notice to the Purchaser elect to determine the contract forthwith on the happening of any of the following events:-

- If the Purchaser shall commit a breach of this or any other contract with the Company.
- If the Purchaser shall commit or be subject to an Act of Insolvency (as defined in condition 7).
- If any sum owing to the Company from the Purchaser on any account whatsoever shall be unpaid after the due date for payment (in which event the Company shall have a general lien for any sum on all or any property of the Purchaser in its possession).
- If the Purchaser shall refuse to take delivery of or collect any of the Goods in accordance with the terms of this contract.

17. DESCRIPTIVE MATTER

Descriptive matter, illustrations, estimates of performance, dimensions and weights contained in documents issued by the Company are to be regarded as being for guidance only and are not binding on the Company in any way. The Company's policy is one of continuous improvement and the right to change designs at any time without notice is reserved. Claims of compliance with any relevant standards whether printed in catalogues or marked on goods, are to be interpreted as type test compliance required by those relevant standards. Where any such details are important to the Purchaser the Purchaser should request the Company to confirm them expressly before placing an order.

18. FORCE MAJEURE

In the event of the Company being delayed from performing the contract by any cause beyond its reasonable control (including (but without limitation) shortage of materials, or power, delays in transit, strikes or lockouts or other industrial disputes, whether at the Company's premises or those of its suppliers, or accidents at the Company's premises, whether or not the same was or might have been foreseen when the contract was concluded, performance by the Company shall be suspended during the period of delay, provided always that if such delays shall exceed 6 months, either the Company or the Purchaser may give written notice terminating the contract as to further deliveries or work.

19. WAIVER AND SET-OFF

- No failure or delay on the part of the Company to exercise any of its rights under the contract shall operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Purchaser of any of the Purchaser's obligations under the contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.
- Any liability of the Company under the contract shall be subject to and conditional upon the due performance and observance by the Purchaser of all its obligations under these conditions and subject to these conditions the Purchaser shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever or however arising which might otherwise be available to it.

20. ENGLISH LAW

All contracts for sale and these conditions shall in all respects be construed and operate in accordance with English Law and the Purchaser hereby submits to the non-exclusive jurisdiction of the English courts but without prejudice to the right of the Company to bring proceedings in any jurisdiction it thinks fit.

21. MISCELLANEOUS

If any of the foregoing provisions shall be invalid or unenforceable such invalidity of unenforceability shall not affect the remaining provisions.

IBP CONEX LIMITED, WHITEHALL ROAD, TIPTON,
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