

BALSTREET LTD

CONDITIONS OF SALE

- 1. DEFINITIONS**
The following expressions in these conditions shall mean respectively:
- 1.1 "Seller" means Balstreet Ltd.
1.2 "Buyer" means the person, firm or company placing an order with the seller for the purchase or supply of goods and/or services from the seller.
1.3 "Goods" means all those goods and/or services which are the subject of the Buyer's order and which are to be supplied to the Buyer by the Seller under these Conditions of Sale.
1.4 "Contract" means the contract for the supply of Goods formed by the Seller's acceptance (which however made or communicated, shall be deemed made subject to these conditions) of the Buyer's order.
- 2. FORMATION OF CONTRACT**
2.1 All Goods sold by the Seller are sold subject to these Conditions of Sale and these Conditions of Sale shall be the sole terms and conditions of any sale by the Seller to the Buyer
2.2 No amendment or addition to the Contract shall be deemed to have been accepted unless accepted in writing by the Seller.
- 3. QUOTATIONS**
The prices, quantities and delivery times stated in any quotation are not binding on the Seller. They are commercial estimates only which the Seller will make all reasonable efforts to achieve. Unless otherwise agreed in writing, quotations remain valid for 30 days.
- 4. SPECIFICATIONS**
All drawings, photographs, illustrations, performance data, dimensions, weights and other technical information and particulars of the Goods are given by the Seller in the belief that they are as accurate as reasonably possible but are not to be treated as binding or as forming part of the Contract.
- 5. ORDERS AND DELIVERY**
5.1 Orders are accepted by the Seller subject to the availability of Goods for delivery.
5.2 Unless otherwise agreed, delivery of Goods within the UK will be made at the cost of the Buyer to the address specified in the Buyer's order by any method of transportation regarded as suitable by the Seller at its discretion.
5.3 Although the Seller will use all reasonable efforts to meet delivery dates, it shall not be liable to the Buyer for any loss or damage, whether direct, indirect or consequential if it is delayed or prevented, in whole or in part, from delivering the Goods.
5.4 If the Buyer refuses or fails to take delivery of the Goods on the date of delivery the Seller will be entitled at its discretion to store the goods at the risk of the buyer and the buyer shall in addition to the price payable under clause 8 pay all costs and expenses of such storage and any additional costs of carriage incurred
5.5 The Seller reserves the right to deliver in instalments at its discretion.
5.6 All Goods must be inspected by the Buyer immediately on delivery. If any Goods are damaged or lost or if there has been a short delivery, the Buyer must endorse the consignment note accordingly and submit a detailed written claim to the carrier within three days of delivery of the Goods and supply a copy of such claim to the Seller within seven days of delivery of the Goods.
- 6. PACKAGING**
Unless otherwise agreed in writing, the Seller will package the Goods in its normal domestic delivery packaging. Any special or export packaging will be at the Buyers expense and may delay delivery. Unless special packaging is requested in writing by the Buyer, no claim can be made against the Seller for damage to or deterioration of the Goods in transit.
- 7. RISK**
The risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods in accordance with Clause 5.
- 8. PRICE**
8.1 The price payable for the Goods shall be as stated in the order acceptance form relating to the Goods unless otherwise stipulated in writing by the Seller.
8.2 The price is exclusive of the cost of delivery in accordance with Clause 5.2 and exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods all which shall be for the Buyer's account unless otherwise stipulated in writing by the Seller.
8.3 The Seller may increase any price (by reference to foreign exchange fluctuations or variations in the cost of raw materials or otherwise) or vary the items of payment at any time upon not less than thirty days' prior written notice to the Buyer. The Buyer may at any time within ten days of the receipt of such notice give the Seller notice in writing of its objection to any such increase or variation and in the absence of any such objection shall be deemed to have accepted the increase or variation. If the Buyer so objects the Seller may either elect to continue to supply the Buyer at the price or on the terms of payment existing at the time of the notified increase or variation or terminate the Contract forthwith upon notice in writing to the Buyer.
- 9. PAYMENT**
9.1 Unless otherwise agreed in writing, the Buyer shall make payment for the Goods in pounds sterling within twenty eight days of the date of invoice, except for Goods for export outside the UK which shall be paid for by irrevocable letter of credit, confirmed by a first class London bank and delivered to the Seller at least ten days prior the scheduled delivery date,
9.2 Purchase orders placed on the Company are divisible. Each delivery shall be deemed to arise from a separate contract, and shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for therein without reference to and notwithstanding any defect or default in the delivery of any other instalment or of any other instalment under any other contract.
9.3 If payment is not made when due, the Seller may, without prejudice to its other rights, charge interest at an annual rate of three percent above the current base rate of HSBC Bank plc to be calculated on a day to day basis on the balance outstanding until payment is made in full.
9.4 The Buyer shall not purport to set off or withhold any payments claimed or due to the Seller under this or any other contract.
9.5 Any fees, legal or professional charges which may be incurred in securing payment from the Buyer will be chargeable to and payable by the Buyer on a full indemnity basis.
- 10. TITLE**
10.1 The Seller shall retain title to the Goods until it has received payment in full of all sums due in connection with the Contract. For these purposes the Seller has only received a payment when the amount of that payment is irrevocably credited to its bank account.
10.2 If any of the Goods owned by the Seller are attached to, mixed with, or incorporated into other goods not owned by the Seller and are not identifiable or separable from the resulting composite or mixed goods, the Seller shall have title to the resulting composite or mixed goods absolutely and not by way of charge and shall retain title for as long as and on the same terms as those on which - it would have retained title to the Goods in question or until the Seller resells sufficient of the resulting composite or mixed goods to discharge the sums owing to the Seller, any excess to be accounted for to the Buyer.
10.3 The Buyer shall store goods owned by the Seller in such a way that they are clearly identifiable as the Seller's property and shall maintain records of such goods identifying them as the Seller's property, of the persons to whom it sells or disposes of such goods and of the payments made by such persons for such goods. It will allow the Seller to inspect these records, and the goods themselves on request. All goods supplied by the Seller in the Buyer's possession shall be presumed to belong to the Seller (unless the Buyer can prove otherwise).
10.4 The Seller shall be entitled to trace the proceeds of Sale and any insurance proceeds received in respect of goods owned by the Seller. Such proceeds shall be paid into a separate bank account and shall be held by the Buyer on trust for the Seller.
10.5 If the Buyer fails to make any payment to the Seller when due, compounds with its Creditors, executes an assignment for the benefit of its Creditors, commits any act of bankruptcy or, being a company, enters into voluntary or compulsory liquidation or has a receiver or manager appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Seller has responsible cause to believe that any of these events is likely to occur. The Seller shall have the right, without prejudice to any other remedies:
10.5.1 To enter without prior notice any premises where goods owned by it may be, and to repossess and dispose of any goods by it so as to discharge any sums owned to it by the Buyer under this or any other contract.
10.5.2 To require the Buyer not to resell or part with possession of any goods owned by the Seller until the Buyer has paid in full all sums owed by it to the Seller under this or any other contract;
10.5.3 To withhold delivery of any undelivered Goods and stop any goods in transit. Unless the Seller expressly elects otherwise, any contract between it and the Buyer for the supply of goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this Clause.
10.6 The Goods shall, once the risk has passed to the Buyer in accordance with Clause 7 or otherwise, be and remain at the Buyers risk at all times, unless and until the Seller has retaken possession of them, and the Buyer shall insure accordingly,
10.7 The provisions of this Clause shall survive the accepted repudiation or other termination of the Contract,
- 11. WARRANTY**
11.1 The Seller warrants that the Goods will be free from defects in materials and workmanship for a period of (three) months from the date of delivery and the Seller will at its option refund the purchase price or repair or replace free of charge any Goods which its examination confirms are defective providing:
11.1.1 The Buyer makes a full inspection of the Goods immediately upon delivery;
11.1.2 The Buyer notifies the Seller forthwith of any defects which it discovers;
11.1.3 The Buyer has used the Goods in accordance with any instructions or recommendations of the Seller; and
11.1.4 The Goods are returned to the Seller at the Buyers own expense if the Seller so requests.
11.2 In no circumstances shall the Seller's liability to the Buyer for any breach of Warranty exceed the price paid for the Goods with respect to which the claim is made.
- 11.3 Except as provided for in these Conditions, there are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded.
- 12. LIABILITY**
12.1 The Seller shall under no circumstance be liable for an indirect, special or consequential loss (including loss anticipated profit) howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended use of the Goods, even if the Seller has been advised of the possibility of such potential loss, except that in the case of contracts which are not international supply contracts as defined in section 26 of the Unfair Contract Terms Act 1977 the Seller shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Seller and except that nothing in these Conditions of Sale shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependant or relative of such person.
12.2 The Buyer shall fully indemnify the Seller in respect of all actions, suits, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death whether caused by the negligence of the Seller, its servants, agents or sub-contractors in executing the Contract or howsoever caused, provided that in the case of contracts which are not international supply contracts (as defined above) the Buyer shall not be liable to indemnify the Seller in respect of any action, suit, claim, demand, cost, charge or expense arising from personal injury, or death caused by the proven negligence of the Seller.
12.3 All recommendations and advice given by or on behalf of the Seller to the Buyer as to methods of storing, using or applying the Goods, the purposes for which the Goods may be applied and the suitability of using the goods in any manufacturing process or in connection with any other materials are given without liability on the part of the Seller.
12.4 The Seller makes no representation or Warranty that use of the Goods does not infringe the rights of any third party and the Seller accepts no liability in this respect.
- 13. REGULATIONS AND LABELLING**
The Buyer shall not be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense and necessary import or export licenses, customs clearance, exchange control consent or other authorisation and permits whatsoever and the Buyer shall ensure that the Goods are at all times used and labelled in such a way as to ensure the safety which a person is entitled to expect from the Goods.
- 14. TERMINATION**
Should the Buyer make default in any payment or otherwise be in breach of its obligations to the Seller under the Contract or under any other contract with the Seller or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver or manager or administration to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should the Seller have reasonable doubt to believe that any of these events is likely to occur, the Seller may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith suspend or cancel any uncompleted part of the Contract or stop any Goods in transit or require payment in advance or satisfactory security for further deliveries under the Contract.
- 15. FORCE MAJEURE**
The Seller shall not be liable to the Buyer for any loss or damage caused to or suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Seller including, without limitation, circumstances affecting the provision of all or any part of the Goods by the Seller's usual source of supply or delivery or by the Seller's normal route or means of delivery.
- 16. WAIVER**
The failure of the Seller to insist upon the strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such term or condition and shall in no way affect the Seller's right to enforce such a provision later.
- 17. SEVERABILITY**
If any of the terms and conditions of the Contract (or part thereof) shall be found to be invalid, ineffective or unenforceable of such term or condition (or part thereof) shall not affect any other term or condition (or the other part of the term or condition of which such invalid, ineffective or unenforceable part forms part) and all terms and conditions (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.
- 18. GOVERNING LAW**
The construction, validity and performance of the Contract shall be governed by and construed in accordance with the laws of England.