

A.W.LUMB GROUP

Conditions of Sale

1. Definitions

In these Conditions of Sale "the Seller" means A.W.Lumb (Midlands) Limited and A. W. Lumb (Northern) Limited and "the Buyer" means the party having the right to enforce the supply by the Seller of goods of any description under the terms of the Contract.

2. Contracts

- (i) All quotations are given, all contracts are made and orders accepted only upon and subject to these Conditions of Sale. All other conditions are hereby excluded unless expressly accepted in writing by the Seller.
- (ii) All conditions, warranties, terms and obligations whether expressed or implied by statute, common law, custom or otherwise (including without prejudice to the generality of the foregoing exclusion any warranty or condition as to merchantable quality or fitness for any particular purpose) are hereby wholly excluded.
- (iii) In entering into this Contract the Buyer hereby acknowledges that he has not been induced to enter into the same by any representation made by the Seller its servants or agents otherwise than in the Seller's written quotation or estimate or as may have been in such other term of the Contract as the Seller may have expressly stipulated or agreed in writing.
- (iv) A binding contract for the sale shall only be created upon the acceptance in writing by the Seller of the Buyer's Order or other offer to purchase or upon delivery of the goods to the Buyer whichever shall occur the sooner. Where goods or services are provided to the Buyer under a credit facility granted to the Buyer, the Seller may suspend its performance of the Contract being subject to the conditions of Clause 5 hereof.

3. Prices, Quotations and Estimates

- (i) Only written quotations or estimates for the supply of goods shall be valid.
- (ii) Prices quoted are those current at the date of quotation and shall be subject to variation without notice to allow for any increase in costs coming into effect between the date of the quotation, estimate or tender and the date of delivery or completion of the Contract, unless specifically stated otherwise in the quotation.
- (iii) Without prejudice to the foregoing:
 - (a) Firm price quotations are valid for a period of one month only from the date of quotation, thereafter the Seller may at its absolute discretion accept or reject any order placed by the Buyer.
 - (b) Quotations for the deliver of goods from stock are subject to the goods being unsold on receipt of the Order.
- (iv) List prices are subject to alteration without notice.
- (v) Designs, drawings, illustrations and samples supplied to the Buyer remain the property of the Seller in which the Seller retains copyright and are to be returned to the Seller within a reasonable time or upon demand.
- (vi) Where a Contract requires the Seller to supply goods imported or to be imported into the United Kingdom and in the course of supplying them the cost to the Seller of so doing is increased by reason of variation in the rate of exchange for the sterling against foreign currency the Seller shall be entitled to vary the Contract price so as to recover such additional cost.
- (vii) The Seller reserves the right at any time to demand full or partial payment before proceeding further with an Order or Contract.

4. Tax

Unless otherwise quoted or agreed, the Seller's price does not include Value Added Tax or other tax, levy, duty or surcharge, whether imposed before or after the making of the Contract.

5. Credit Agreements

- (i) Where the Seller has granted the Buyer a credit facility the price for the goods shall be paid by the Buyer on or before the 28th day of the month immediately following the month in which the goods are delivered or if the Seller shall so require, to be paid on demand without any period of notice.
- (ii) The Seller reserves the right to withdraw or vary credit facilities at any time without either giving any reason for so doing or thereby incurring any liability to the Buyer.
- (iii) If the Buyer takes goods from the Seller in excess of the Buyer's credit limit, the Seller may require payment on demand for such excess goods.

6. Payment

- (i) When payment of any of the Seller's invoices is overdue, the Seller may suspend its performance of the contract to which the invoice relates and/or of any other contract then subsisting between the Seller and the Buyer.
- (ii) Except as the Seller's quotations/estimates may provide, no discounts are allowable to be taken against amounts invoiced by the Seller. All accounts are strictly net monthly unless shown otherwise on the invoice. Any Settlement Discount will be disallowed unless payment of the Sales Invoice is made in accordance with Clause 5(i) above.
- (iii) The Seller shall have a discretion to charge and recover interest from the Buyer on the price of the goods supplied at the rate of 5% above HSBC Bank PLC base lending rate per annum from the date upon which payment is due until the date that payment is received.
- (iv) In the event of debt recovery or legal action being taken by the Seller against the Buyer, the Buyer shall be responsible for all costs and disbursements incurred by the Seller, including any commission or collection fee payable to third parties for their debt recovery services.

7. Delivery

- (i) Where goods are offered for delivery to site, the Seller's obligation is to deliver as near to site as safe hard road permits. If, in any particular case, the Seller should agree to relax this condition, the relaxation shall be deemed to have been given in consideration of an indemnity from the Buyer against all losses, costs and expenses which the Seller may incur or pay as a result of such relaxation.
- (ii) The Seller shall have the sole discretion as to the mode of transport to be adopted.
- (iii) Delivery of goods by the Seller does not include the provision of labour and equipment for unloading and stacking, which the Buyer is to provide at his own cost.
- (iv) Goods held by the Seller pending delivery instructions may be subject to a storage charge.
- (v) Demurrage charges will be applied by the Seller to the Buyer when vehicles are held on site for any period exceeding one and a half hours.
- (vi) Any Contract or part thereof for which the Buyer has not given to the Seller clear and unambiguous instructions for delivery within a period of six months after acceptance of the Order shall (at the option of the Seller) be invoiced and the amount become payable by the Buyer forthwith or cancelled. Unless such Order shall be invoiced within 7 months from acceptance of the Order it shall be deemed to be cancelled.
- (vii) The Seller reserves the right to deliver goods by installments.

8. Non-delivery and damage in transit.

- (i) Time shall not be of the essence of this Contract insofar as it concerns the delivery of the goods or the performance by the Seller of its obligations under the Contract. The Seller shall not be liable for any loss or damage howsoever arising from the failure to deliver goods or perform its obligations by any date specified either by the Contract or by any collateral agreement, representation or arrangement made by the Seller or its servants or agents, whether oral or in writing.
- (ii) No claim for damage in transit, for shortage in delivery or for loss of goods will be entertained unless:
 - (a) in the case of damage, a separate notice in writing is given to the carriers and to the Seller within 3 days of receipt of the goods, followed within 14 days of advice of dispatch by a complete claim in writing to both the Seller and the carrier or
 - (b) in case of loss of goods, a separate notice in writing and claim is given to the Seller and carrier within 14 days of the Seller's advice or dispatch to the Buyer.
 - (c) In all cases a signature "unexamined" shall be deemed to be an unconditional acceptance of the goods.
- (iii) The Seller shall not be liable in the event of non-fulfilment of a Contract owing to circumstances outside the Seller's control which shall be deemed to include but shall not be limited to, fire, act of

God, war, civil strife, disease, strike, lock-outs, accident, shortages of material or power and failure on the part of the Seller's suppliers.

9. Variation and Cancellation

- (i) The terms of the Contract may not be varied, nor may the Contract be suspended or cancelled without prior consent of the Seller in writing, which may be given on terms.
- (ii) If the Seller's performance of a Contract is interrupted or hindered for any reason other than the default of the Seller the Buyer shall be liable to pay the Seller a proper price for any additional work or attendance thereby required.

10. Returns

Subject to the Seller's discretion, only new and unused normal stock lines will be accepted for credit, less the amount of the Seller's handling, haulage and re-stocking charges. Proof of purchase will be required in all cases.

11. Warranty

- (i) During a period of six calendar months from the date of delivery of the goods (or, if longer, the period of the Warranty received by the Seller from the manufacture of the goods) the Seller will at its option repair or replace at the point of sale goods which are shown to be defective by reason of faulty workmanship and/or materials, provided that the defect has been notified to the Seller within a period of 30 days after it has become apparent.
- (ii) Goods replaced under the terms of the Seller's warranty shall thereby and thereupon become the property of the Seller and shall be held by the Buyer to the order of the Seller.
- (iii) The Seller's express warranty set out above is given in lieu of and excludes all other warranties, guarantees and assurances, whether express or implied, statutory or otherwise

12. Consequential Loss

Except where negligence on the part of the Seller is shown to have resulted in the death of, or bodily injury to, any person, the Seller shall not be liable for consequential loss suffered by the Buyer as a result of the Buyer having entered into a Contract and the Seller's price levels are set accordingly.

13. Descriptive Matters

- (i) Descriptive matter contained in catalogues brochures and any other publication or display is believed correct and up-to-date, but it is not warranted so, unless specifically confirmed in writing by the Seller.
- (ii) Colour indications, whether given by means of the provision of samples or derived from colour charts or descriptions, are necessarily approximate by reason of inevitable variations in the process of manufacture and reproduction.

14. Passing of Property and Risk

- (i) The risk in goods supplied by the Seller shall pass to the Buyer on delivery of the Goods to or to the order of the Buyer in accordance with the terms of the Contract.
 - (a) Without prejudice to any of the Seller's other rights under the Contract between the Seller and the Buyer and notwithstanding delivery of any goods and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for all goods delivered to the Buyer under this Contract and all other contracts between the Seller and the Buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this Contract and all other contracts between the Seller and the Buyer under which the goods were delivered.
 - (b) If payment under this contract or any other contract between the Seller and the Buyer is overdue in whole or in part the Seller may (without prejudice to any of its other rights) recover or re-sell the goods or any of them and may enter upon the Buyer's premises or other premises to which goods have been delivered a Licence for which purpose is hereby granted. If any of the goods are incorporated in other goods before such payment is made the property in the goods delivered by the Seller shall nevertheless be and remain with the Seller until such payment has been made, provided that where any goods delivered under this Contract or any other contract between the Seller and the Buyer have been sold by the Buyer either in their original form or after further processing or incorporation in some other product then the Buyer shall be trustee for the Seller of the proceeds of sale thereof or of any claim by the Buyer in respect of such proceeds until such time as the Seller shall have been paid in full for such goods.
 - (c) Notwithstanding the provision in (a) and (b) above the goods sold shall be at the risk of the Buyer from the time when they ceased to be in the possession of the Seller and in particular when they are delivered into the possession or custody of a carrier, forwarding agent, warehouseman or other Bailee or agent for the purpose of transmission whether such person is in contract with or instructed by the Seller or the Buyer.

15. Fitness for Purpose

Except where goods are supplied on the express advice of the Seller given in writing that they are suitable for any particular purpose, it shall not be a term or condition of a Contract that goods are sold as fit for any particular purpose, and this notwithstanding that the Seller may have, or be deemed to have knowledge of the purpose for which the goods are required.

16. Measurement and Quantities

- (i) Measurements, dimensions, quantities and quality are expressed, in relation to goods the subject of a Contract, in accordance with the usage of the relevant trade.
- (ii) Where the Seller supplies goods to measurements or in quantities specified by the Buyer and which the Seller has not verified, the Seller shall have no liability if and to the extent that such measurements or quantities prove to be incorrect.
- (iii) The Seller reserves the right to make a cutting charge in respect of goods which are required to be cut to size, and to charge for any item cut to size as if the whole had been supplied.

17. Site Facilities and Approvals

- (i) The Buyer shall without cost to the Seller provide:
 - (a) Sufficient access to the site of the works the subject of the Contract.
 - (b) Such unloading, haulage and carriage facilities on site as a Seller may reasonably need.
 - (c) Adequate dry, secure storage facilities for the goods delivered by the Seller.
- (ii) The Buyer shall be liable for the safe custody of the goods delivered by the Seller to any third party site.
- (iii) The Seller contracts on the basis that all consents, permissions and approvals necessary to enable the Seller to perform the Contract have been or will be obtained by others and that the Seller shall have no responsibility whatsoever to obtain the same.

18. Third Party Rights

- (i) The Seller does not warrant, nor shall it be an implied term of the Contract, that goods and designs sold or employed by the Seller do not infringe the rights of any third party.
- (ii) Where information, instruction or guidance received from the Buyer is the direct or indirect cause of any assertion by, or on behalf of a third party, that the Seller is in breach of any right of that party, the Buyer shall be deemed to have agreed to indemnify the Seller against all costs incurred by the Seller as a result of such assertion.

19. Buyer's Insolvency

Except where payment for goods to be supplied has been made or secured in advance of their delivery to or to the order of the Buyer, the Seller shall be entitled to withdraw from a Contract if and when the Buyer suffers distress or execution to be levied against his or its goods or effects, makes an arrangement or composition with Creditors, enters into liquidation (otherwise than for the purpose or amalgamation or reconstruction) has a Receiver appointed for the whole or any part of its undertaking, or if a Receiving order in bankruptcy is made against him. When the Seller elects to withdraw from a Contract in any such circumstances, the Seller shall henceforth cease to have any liability to the Buyer thereunder but shall remain entitled to claim from the Buyer a due proportion of the Contract price in respect of such part of the Contract as the Seller shall have performed.

20. Miscellaneous

- (i) The Buyer may not assign its rights or liabilities under a Contract without the prior consent in writing of the Seller.
- (ii) Failure by the Seller to enforce a term of Contract shall not prevent the subsequent enforcement of that or any other term of the contract.
- (iii) The construction, validity and performance of a Contract shall be governed by the laws of England.
- (iv) The English Courts shall have exclusive jurisdiction in any dispute or difference arising between the Seller and the Buyer in relation to a Contract.
- (v) The titles to the several Clauses of these Conditions are inserted for convenience only and shall not be deemed to form part of them.

SALES TERMS & CONDITIONS