

## H. BUTTERFIELD LTD. & ASSOCIATED COMPANIES

### TERMS & CONDITIONS OF SALE This supersedes all previous terms and conditions

1. (a) These terms and conditions shall apply to all trading between us and the customer. Acceptance by us of your order is conditional upon acceptance by you of the following Conditions which override all other terms or conditions inconsistent therewith, express, implied or otherwise.
- (b) Any variation of these Conditions shall only be binding if agreed by a Director in writing. Any stipulation or conditions on a *Customer's order form* shall be deemed to be inapplicable to any order placed with us unless expressly agreed to by a Director in writing when acknowledging the order in question.

### 2. QUOTATIONS

- (a) Quotations may be withdrawn at any time before receipt of the customer's acceptance and shall be deemed to be withdrawn if acceptance is not received within thirty days from the date of quotation.
- (b) Any orders given in respect of written quotations must state date and reference of quotation. Telephone orders should be confirmed in writing and must be clearly marked 'Confirmation of Telephone Order'.

### 3. PRICE

- (a) Our quotation and prices are based on costs prevailing at that time when they are given or agreed and are exclusive of VAT. VAT will be added to all invoices at the rate applying at the appropriate tax point. We shall be entitled to adjust the price of the goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by us after the date of the quotation or order in any direct or indirect costs of making, obtaining, handling or supplying the goods.
- (b) Our quotations are based on prices applicable to the quantities specified. In the event of orders being placed for lesser quantities we shall be entitled to adjust the price of the goods as ordered to take account of the variation in quantity.

### 4. PAYMENT

- (a) Unless the sale is for cash or other credit terms have been expressly agreed all accounts are due for payment on the last day of the month following that in which goods are delivered.
- (b) We reserve the right to refuse to execute any order or contract if the arrangements for payment or the customer's credit are not satisfactory to us.

#### 4. **PAYMENT (Continued)**

- (c) The customer shall not be entitled to withhold payment of any amount payable under the agreement to us by reason of any dispute or claim by the customer in connection with the agreement and in the case of any short delivery or damaged goods shall remain liable to pay the full invoice price of all other goods delivered or available for delivery. The customer shall not be entitled to set off against any amount payable under the agreement to us any amount which is not then due and payable by us for which we dispute liability.
- (d) Interest at the rate of 5% per annum above the current HSBC Bank rate shall be payable in respect of all sums outstanding.
- (e) The customer shall reimburse to us the entire cost of representing any cheque or other instrument delivered to us in payment of the sum due by the customer.

#### 5. **DELIVERY**

- (a) Delivery dates are estimates only and the time for delivery shall not be of the essence of the contract. We shall not in any event be liable to compensate the customer in damages or otherwise for any non-delivery or late delivery of goods or for any loss consequential or otherwise arising therefrom.
- (b) The customer is to provide free of charge any labour necessary for unloading goods when delivered and our driver's responsibility is limited to handling goods off the vehicle.
- (c) If our vehicle is kept on site for an unreasonable time or has to return to the depot without completing delivery through lack of assistance or if additional staff have to accompany our driver an appropriate additional charge will be made
- (d) If the customer does not accept delivery of goods ordered for any reason costs incurred will be charged.
- (e) The customer shall either themselves or by their duly authorized representative sign our delivery ticket as acknowledgement of delivery.
- (f) We do not undertake to deliver or collect any load over roads or ground which in our discretion we consider to be unsuitable. If a vehicle used for performing our contract with any customer delivers or collects a load to or from a place situate off the public highway, the customer is to be solely responsible for any damage or accident and is to indemnify us fully in respect thereof.
- (g) If the customer wishes to claim that there is any shortage on delivery of any goods delivered or that the same have been damaged in transit he shall give notice in writing to us and to any railway or other carrier by whom the goods were delivered within three days after the delivery is made, failing which the goods shall be deemed to have been delivered undamaged and in accordance with the delivery documents.

## 5. DELIVERY (Continued)

- (h) Unless otherwise expressly agreed in writing our prices only cover delivery and working on normal working days and during normal working hours. All deliveries made or work done at the customer's request on Bank Holidays, Sundays and Saturday afternoons and outside normal working hours, will be subject to extra charges.
- (j) In the event of any goods or any packing or container being delivered and deposited whether on the public highway or elsewhere the customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property in relation to such goods packing or container and shall indemnify us in respect of all or any costs claims losses or expenses which we may incur as a result of such delivery. Without prejudice to the foregoing the customer is specifically advised that we are not allowed by law to traverse by lorry the public footpaths. In the event that we are instructed to deliver or deposit materials on the public highway, the customer shall take all the aforementioned precautions and indemnify us as aforesaid.

## 6. RETURN OF GOODS

Goods cannot be accepted for credit unless with our approval and drivers have strict instructions not to collect without written authority. Delivery Note numbers must be quoted when returning goods. Goods supplied correctly to order cannot be accepted after 30 days from the original date of delivery. A re-stocking charge may be made in respect of any goods which are returned. Items not carried in stock and obtained to the customer's specifications cannot be accepted for credit.

## 7. PLANS, DRAWINGS ETC.

- (a) Where, to assist a customer, sketch plans or drawings are provided, it must be understood that whilst every endeavour is made to ensure accuracy, the final responsibility as to the *functional* and *structural* suitability of such plans or specifications rests with the customer and in all other respects, plans and drawings are only supplied on this expressed understanding.
- (b) In the event that we provide estimates of quantities or measurements on the basis of drawings and/or Bills of Quantities and/or Specifications submitted by the customer, we shall exercise reasonable care in so doing but we accept no liability for inaccuracies in the estimates or calculations. Without prejudice to the generality of the foregoing, the customer is specifically advised to conduct his own survey of the aforesaid documents and to seek independent advice in verification of the said quantities and measurements.

## 8. DELIVERY CHARGE

A Charge for delivery may be made on goods obtained specially from Works or goods sent by other than usual means of transport on customers' instructions.

9. **SALES BY DESCRIPTION**

The customer must accept sole responsibility for the suitability of goods ordered. Illustrations or descriptions in catalogues and trade literature must be accepted as showing type class and general character only without warranty or guarantee as to substance, performance, colour, size, thickness or shape.

10. **SAMPLES**

When samples are submitted, these are drawn from bulk and are representative of the whole and no guarantee can be given that every item will be the same in all respects as the sample.

11. **REPRESENTATIONS**

- (a) The customer is responsible for the suitability of the goods or materials ordered.
- (b) The goods are supplied by us on the basis that they conform to the written terms and to any description contained in this document. No other representations, terms, conditions or variations of any sort whatsoever whether written or oral alleged to have been made or entered into by us or any servant or agent of ours shall be of any force or effect.
- (c) Where we supply *slip bricks* or *bonded bricks* we accept no liability either for the failure or reduction in strength or durability of the same or in the case of bonded bricks for the failure of the materials and/or adhesives by which the components are bonded.

12. **MANUFACTURER'S GUARANTEE**

If and to the extent that any person by whom we have been supplied with the goods supplied hereunder (hereinafter referred to as "the Supplier") validly excludes restricts or limits his liability to us in respect of the said goods or of any loss or damage arising in connection therewith our liability to the customer in respect of the said goods or of any loss or damage arising in connection therewith shall be correspondingly excluded, restricted or limited. If the Supplier validly excludes restricts or limits his liability to us in respect of our liability to the customer in connection with the said goods, then our liability to the customer in respect of the said goods shall be excluded restricted or limited to the extent to which the Supplier is liable to us in respect of our liability to the customer and no further. Any term, warranty or condition express or implied or statutory to the contrary is excluded. We will, upon request, supply the customer with details of any such exclusion restriction or limitation. The customer shall comply with all requirements of the Supplier as to the registration or purchase of any equipment (without limitation of Statutory Rights) use servicing and maintenance thereof.

13. **MANUFACTURE TO ORDER**

Goods manufactured to the design or specification of the customers or their experts carry no undertaking of any kind except of compliance with the design or specification.

**14. SUBCONTRACTING**

The right to sub-contract any order or part of any order is reserved.

**15. DEFECTIVE GOODS**

- (a) Save as herein appearing goods or materials supplied will be replaced or repaired free of charge or in our absolute discretion the purchase price refunded if we are satisfied that they were defective in materials or workmanship on delivery and notice of the defect is given to us within 14 days of delivery and the goods returned to our depot carriage paid. We accept no liability as to the cost of taking out refixing or making good other materials and the customer shall hold us fully and effectually indemnified in respect of any claim of any person in respect of such or any other consequential loss or damage. Subject to the above our entire obligation and the customer's sole remedies shall be in respect of:
- (i) death or personal injury resulting from our negligence;
  - (ii) direct physical damage to the customer's tangible property caused by our negligence.
- (b) Our total liability for all loss or damage claimed to result from any breach of our obligations hereunder shall be limited to the customer's actual money damages which shall not exceed the contract price for the goods (provided that this monetary limit shall not apply to our liability for death or personal injury under (a)(i) above).
- (c) In no event shall we be liable for the loss or damage set out below even if foreseeable by us or in our contemplation:
- (i) economic loss including loss of profits, business revenue, goodwill or anticipated savings;
  - (ii) damages in respect of special indirect or consequential loss or damages;
  - (iii) any claim made against the customer by any other party.

**16. TITLE AND RISK**

- (a) The ownership of the goods sold by us to the customer shall remain with us until the customer has paid us the price for those goods.
- (b) For the purpose of these terms all liquidated sums owed by the customer to us on any account or grounds whatsoever shall be deemed to form part of the said price.
- (c) The risk in the goods shall pass to the customer on delivery or collection.
- (d) The goods will be stored on the customer's premises separately from his own goods and those of any other person and the customer will not interfere with any identification marks or serial numbers on the goods.
- (e) We may at any time recover and re-sell goods to which title shall not have passed.

16 **TITLE AND RISK (Continued)**

- (f) By its servants or agents we shall be entitled to access to the customer's premises or those under his control or those to which the customer has a right of access where the goods are stored or reasonably thought to be stored for the purpose of inspection or re-possession at any time.
- (g) Upon the goods being repossessed by us pursuant to this condition the risk in them shall revert to us but not otherwise and the customer's liability for payment to us shall be extinguished to the extent of the sale price of those goods to the customer subject and without prejudice to the liability of the customer to us for any transport or handling charges legal costs or other expenses reasonably incurred by us in exercise of its rights hereunder.
- (h) If any of the goods are incorporated in or used as material for other goods before payment to us all our rights hereunder in the goods shall extend to those other goods.
- (j) The customer shall hold all proceeds of sale or otherwise arising on disposal or use of the goods whether they be mixed with the goods of the customer or another or incorporated in the property of another on trust for.
- (k) In the event of an Administrative Receiver being appointed or a Petition being presented or Order made for the appointment of an Administrator or winding up of the customer or any resolution being passed for its liquidation in so far as it is lawful, we shall be deemed to have forthwith revoked any licence or authority for the future use of our goods in the possession or control of the customer and shall not be deemed to consent to the exercise of any actual or claimed right of any person in respect of its goods except to the extent that such person pays the purchase price of the goods to us or personally undertakes so to do within 28 days.

17. **PACKAGING**

We shall not be liable in respect of defective or inadequate straps or packing provided by any supplier to us of goods and materials sold by us to the customer. The customer shall verify the safety and adequacy of all packing materials and straps.

18. **CONSUMER PROTECTION**

The Statutory Rights of the customer as to the quality, fitness or description of goods are not affected by these conditions of sale.

19. **ENGLISH LAW**

Every contract to which these conditions apply shall be construed and operate as an English contract and in accordance with English Law and all disputes shall be submitted to the jurisdiction of the English Courts.