

# STANDARD TERMS & CONDITIONS



## DEFINITIONS

1. In these Conditions of Sale "the seller" means LM Products Ltd incorporating any trading name under which they may operate
2. In these Conditions of Sale "the buyer" means the party to whom goods are sold or supplied by the Seller.
3. Heading are included for reference only and do not affect these Conditions of Sale or the interpretation thereof.

## THE CONTRACT

4. Unless otherwise expressly agreed in writing by the seller these Conditions of sale override any terms and conditions stipulated, incorporated or referred to by the Buyer in his order or negotiations. These Conditions of Sale embody the entire understanding of the Seller & Buyer and supersede any prior promises, representations, understandings or implications (written or oral). No variation of these Conditions of Sale shall be effective against the Seller unless expressly agreed in writing and signed by a duly authorised employee of the Seller on it's behalf. Any quotation supplied by the Seller is given only as a guide and no Contract will be created until a purchase order issued by the Buyer is accepted by the Seller. Receipt of a purchase order by the Seller will confirm acceptance by the Buyer of the incorporation of these Conditions of Sale in the Contract with immediate effect.

## PRICE

5. Notwithstanding any offer, quotation, tender price or price list, all prices are subject to alteration without notice # and goods will be invoiced at prices ruling at date of despatch.
6. The Seller reserves the right to increase the quoted price
  - a) To take account of increases in the costs of Labour, Raw Materials and Overhead Charges occurring between the date when the price was quoted and the date of the actual delivery
  - b) To add Value Added Tax or any similar levy or duty which shall be payable by the Buyer.
7. A minimum invoice value will apply in respect of all quotations given in the amount of not less than fifty pounds (£50) unless the Buyer elects to pay cash.

## TEST CERTIFICATES

8. The Seller shall not be required to supply test certificates unless the same are requested in writing a reasonable time before delivery and the Seller may charge a reasonable fee for any certificate supplied.

## QUANTITY TOLERANCE

9. All orders are subject to a tolerance of plus or minus five percent (5%) of the quantity ordered. The Seller shall be deemed to have fulfilled it's contract if the goods delivered fall within this tolerance. Where material charges are made on a rate per tonne basis, the theoretical weight of the material on the upper limit of the permitting rolling tolerance will be used as the means of calculation and the calculated weight rounded upwards to two (2) decimal places for invoicing purposes.

## DELIVERY

10. Delivery shall be deemed to be effective when the goods are unloaded at the address nominated by the Buyer or his agent, save where the goods are to be collected by the Buyer or his agent, when the goods are loaded onto the vehicle collecting them.
11. In no case is delivery on or by a fixed date a term of the contract. Any periods of time quoted or accepted by the Seller for despatch, delivery or completion of the order are to be treated as estimates only, not involving the Seller in any liability to the Buyer in respect of loss suffered as a result of failure to despatch, deliver or complete within such a period of time.
12. The Seller reserves the right to deliver goods by instalments and in such an event each instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the goods comprised in the earlier instalments have been paid for in full.
13. The Seller reserves the right to charge for carriage in respect of all deliveries made by the Seller and for handling in respect of all goods collected by the Buyer unless such charge is agreed to be NIL by the Seller in writing
14. The risk in the goods shall pass to the Buyer on delivery and the Buyer should arrange insurance accordingly.
- 15a. The Buyer is expected to commence unloading of suppliers vehicle within half an hour of its arrival at the Buyer's site. In the event that the vehicle is requested to wait beyond this period, a charge for waiting time of £100 per hour or part thereof will be chargeable by the supplier.
- 15b. Once unloading of the Supplier's vehicle has commenced the operation shall be completed within one hour for rigid vehicles, 2 hours for articulated vehicles. In the event that unloading takes longer than this period, a charge for waiting time of £100 per hour or part thereof will be chargeable by the Supplier.
- 16a. It is the buyers responsibility to review the order confirmation/acknowledgement. Any alteration to the contract at this stage has to be authorised/approved by the seller.
- 16b. It is the Buyers responsibility to notify the Seller if their site/premises are unable to take a scheduled delivery due to closure as a result of adverse site/weather conditions. Failure to do so will result in additional charges to compensate the Seller for the cost of the vehicle.
17. Please refer LMP Delivery charter for further delivery information.

## VARIATIONS

18. If the Seller makes a variation to the goods in any way from the agreed specification at the Buyers requestor pursuant to any legal requirement the Buyer shall pay in addition to all the other sums payable under this contract the cost of the variation insofar as the same increases the cost incurred by the Seller in performing this contract.
19. Where goods have already been supplied and are subsequently found to be incorrect in the whole or part and this is wholly or substantially attributable to be the fault of the Buyer then a handling charge will be made if the Seller is requested to accept goods back for credit or replacement and agrees to do so. The Seller reserves the right to refuse acceptance of the return of goods in these circumstances.

# STANDARD TERMS & CONDITIONS



## CLAIMS

20. Notice of any claim relating to shortage of or damage to the goods shall be made to the Seller in writing within 4 working days of receipt of the goods. In event of non-delivery of goods the Buyer shall notify the Seller in writing within 4 working days of receiving the invoice.
21. The Seller will consider claims only if the above conditions are met and the claim is signed by the Buyer and accompanied by full particulars giving the Buyer's order number and copy of the delivery note in respect of the goods which in the case of a shortage or damage to the goods must bear an appropriately qualified signature, for example "material received damaged (signed)".
22. The Seller's liability hereunder in respect of the quantity supplied, shortage or damage to the goods shall be limited to the proportion of price attributable to the goods undelivered or damaged. No claim for labour charges or expenses or any other consequential loss of any kind will be allowed.

## CANCELLATION BY THE BUYER

23. The Buyer may cancel or suspend the contract only with the Seller's prior written consent following agreement by the Buyer to reimburse the Seller in an amount to be determined by the Seller, by way of compensation against all losses incurred as a result of cancellation or suspension of the contract.

## TERMINATION BY THE SELLER

24. The Seller shall (without prejudice to any of its other rights hereunder) be entitled to terminate any contract forthwith by written notice to the Buyer if the Buyer shall:
  - a) become insolvent
  - b) fail to pay amounts falling due (whether under these conditions or otherwise) to the Seller
  - c) suffer the appointment of the Receiver
  - d) pass resolution for winding-up (other than for purpose of bona fide amalgamation of bona fide reconstruction)
  - e) commit a breach of any term of the contract or any other contract with the Seller

## PAYMENT TERMS

25. Accounts are payable 30 days from the end of the month.
26. The Seller reserves the right to charge interest on late payment at the rate of four percent (4%) above the Bank of England base rate or fifteen percent (15%) whichever is the greater on the daily balance from the due date until the payment is made.
27. In the event of any delays in the despatch or delivery which are attributable to the Buyer's actions or failure to act, the Buyer shall make payment to the Seller in accordance with the above payment terms as if the goods had been delivered at the time at which but for such delay or delays such delivery would have taken place.
28. No Claim by the Buyer shall entitle the Buyer to any deduction, retention or withholding of any part of any sums due for payment hereunder, The Buyer shall not be entitled to any set-off of obligations within or between contracts with the Seller.
29. Should default be made by the Buyer in paying in full any sum due under any order as and when it becomes due in accordance with the above payment terms the Seller shall have the right to suspend all further deliveries until the default be made good or to rescind any or all the contracts between the Buyer and the Seller and to recover damages from the Buyer for any resulting loss.

## TITLE

30. Notwithstanding delivery title to the goods shall not pass to the Buyer until all sums due or owing on any account whatsoever by the Buyer to the Seller have been paid in full or the goods cease to be identifiable as the Seller's property by reason only of their conversion by the Buyer into other products. Until such time the Buyer shall hold the goods as bailee of and in a fiduciary capacity for the Seller and shall:
  - a) keep the goods marked or stored separately from other goods so as to be identifiable as the property of the Seller
  - b) deliver the goods up to the Seller on demand: and hereby irrevocably authorise the Seller or its agent to enter upon the Buyer's premises in order to retake possession of the goods. The Buyer shall be entitled in the ordinary course of its business to sell any goods that remain the property of the Seller on the condition that:
    - i) such goods are sold reasonable commercial terms
    - ii) to the extent of any sums due or owing the Buyer to the Seller the products of any such sale are held by the Buyer on trust for the Seller and paid over to the Seller on demandand,
    - iii) the Buyer indemnifies the Seller in full against any liability to third parties arising upon, after or out such sale.
31. In the event of the Buyer's insolvency or liquidation the Seller shall have a general lien, in addition to any such rights the Seller may have in law, over all goods belonging to the Buyer then in the Seller's possession to the extent of any sum due or owing by the Buyer to the Seller.

## FITNESS FOR PURPOSE

32. The Buyer assumes responsibility for the capacity or performance of the goods being sufficient and suitable for the intended use.
33. No warranty, condition or representation is given or made as to the quality of the goods supplied hereunder, their condition or their fitness for any particular purpose and any such warranty, condition or representation whether expressed or implied whether by statute, by collateral agreement or from otherwise is hereby excluded.

# STANDARD TERMS & CONDITIONS



## SELLERS LIABILITY

34. The Buyer agrees to examine the goods on delivery and that no claim will be made or allowed unless it notifies the Seller in writing within 4 working days of receipt of the goods of any shortage or defect in the goods.
35. The Seller undertakes to credit or replace any goods found to be defective or not to conform in a material respect with any contractual description expressly applied to them provided that:
  - a) The goods complained of have been appropriately stored and properly handled, carried and used since delivery to the buyer and have not since the delivery been subject to any alteration or modification.
  - b) The Seller or its agents are afforded such opportunities and facilities as they may reasonably require for examination of the goods.
  - c) such examination, in the opinion of the Seller or its agents discloses that the goods are defective or otherwise fail to accord to the contract in a material respect.
  - d) the goods are safely and appropriately stored on behalf of the Seller by the Buyer and held available for collection by or on behalf of the Seller
36. Save as in hereafter provided all goods are sold "Non-Prime" in their actual state as seen without warranty and with all faults whether or not the goods have been inspected by the Buyer prior to delivery. Save where the Seller warrants in writing that the goods comply with a recognised specification or standard, any statement, specification, description or other information supplied by the Seller in respect of such goods is given in good faith but the Seller can accept no responsibility for its accuracy. Under no circumstances will the Seller be under obligation to replace or make good or entertain any claim whatsoever in respect thereof. If the Buyer shall re-sell such goods the Buyer shall ensure that a provision in a similar form to this condition is incorporated in the resale agreement unless prior to re-selling the goods, the Seller has caused the goods or such part of the goods as the Seller re-sells to comply with a recognised specification or standard.
37. The Buyer shall indemnify the Seller against all claims made against the Seller and all losses, liabilities, costs and expenses consequent thereon which arises out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon supply of a product as defined in Section 1 of the Consumer Protection Act 1987 to the Buyer as "Non-Prime" or then any third party by the Buyer which comprises "Non-Prime" goods sold to the Buyer by the Seller or which has a component or components included or is manufactured from any "Non-Prime goods supplied by the Seller whether or not such claim is made pursuant to the said Act or the legislation of any member state of the European Community made pursuant to in accordance with the directive of the Council of European Communities dated 25th July 1985

## LIMITATIONS OF LIABILITY

38. The Seller shall not be liable for any expenditure, loss (including without limitation, economic indirect and consequential loss) damage or injury (other than personal injury arising out of negligence for which we accept liability in accordance with the Unfair Contract Terms Act 1977 where you are a UK Buyer for UK supply) arising out of any use or dealing with the goods however such expenditure, loss, damage or injury shall arise and whether from any defect in the goods or otherwise.
39. The Buyer shall indemnify the Seller against all and any claims, costs, actions or demands whatsoever and howsoever arising made by any third party (including the Buyer's employees) whether direct or indirect including without limitation those relating to the use of the goods and those arising as a result of the operation of the Consumer Protection Act 1987
40. The Buyer acknowledges that only by reference to and by reason of the aforesaid limitations is the Seller able or willing to offer goods at the prices quoted
41. The Buyer acknowledges that it is the responsibility of the Buyer to insure against any liability or risk not accepted by the Seller under these Conditions of Sale

## FORCE MAJEURE

42. In the event of the Seller being delayed in or prevented from performing its obligations hereunder owing to any cause whatsoever beyond the Seller's control including without limitations act of God, war, strikes, lockouts, trade disputes, difficulty or failure in obtaining labour or materials, breakdown of equipment, or any other cause, the Seller will not be liable for any loss, damage or expenses incurred and shall be at liberty to cancel or suspend the contract without incurring any liability arising therefrom and the Buyer shall not be entitled to terminate the contract.

## GOVERNING LAW

43. These Conditions of Sale and any questions, disputes or other matters relating to them or to any contract made subject to them shall be governed by and determined in accordance with the Laws of England and shall be referred to an English Court which shall have sole discretion