

TERMS AND CONDITIONS OF TRADING

1 General

The following are the only terms on which A.J.Smith and Son (Benfleet) Ltd ("the Seller") is willing to sell goods (the Goods) and by ordering the Goods from the Seller or taking delivery of them the Buyer agrees that the following terms shall apply to the exclusion of his own terms (if any). No officer, employee or agent of the Seller (other than a Director) has authority to contract for the sale of Goods on any other terms, or to amend, vary or waive these terms, and a Director has authority to do so only in writing.

2 Time of Delivery

Any time of delivery stated by the Seller either on the delivery note or invoice or otherwise shall be treated as an estimate only. The Seller will use his best endeavours to deliver by that time but gives no other undertaking as to the time of delivery.

3 Place of Delivery

The Goods shall be delivered to the Buyer at the place of delivery recorded on the delivery note or invoice or (if no address is recorded there) at the premises of the Seller.

4 Prices and Settlement of Accounts

The price shall be payable on or before delivery of the Goods unless the Buyer has a trade account with the Seller in which case payment must be made in accordance with the agreed credit terms. The time of payment shall be of the essence. In the event that payment is not made when due, the Seller may charge interest at 3% above the base rate for the time being at HSBC. Any goods or services ordered but not called off within 6 months of our acknowledgement may be delivered and invoiced at any time thereafter.

5 Trade Accounts

Trade accounts are payable nett monthly or, if sooner immediately upon the commencement of any act or proceeding involving insolvency. The Buyer may not withhold or set off payment for goods or services delivered against accounts on other contracts. The seller may supply goods or services by more than one consignment and invoice each separately, in which case each such consignment shall be deemed to be a separate contract subject to these Conditions and you shall pay to the Seller the amount payable under the invoice for each consignment notwithstanding any rights which you claim against the Seller in respect of any other consignment.

6 Passing of Property

(i) Property in the Goods shall pass to the Buyer on the occurrence of the last of the following events, namely:

(a) payment in full of the price of the Goods sold hereby, and

(b) payment in full of every other sum owing by the Buyer to the Seller.

(ii) Until property shall have passed as aforesaid the Buyer shall hold the Goods as bailee for the Seller and shall keep them separately stored and identified as the property of the Seller.

(iii) In the event that the Buyer shall sell the Goods before property has passed as aforesaid, he shall do so as the agent of the Seller, the proceeds of any such sale shall be kept in a separate account identified as containing monies from the sale of the Sellers property and the Buyer shall account to the Seller for the whole of such proceeds.

(iv) Until property shall have passed as aforesaid the Seller shall be at liberty at any time:

(a) by notice in writing to require the Buyer forthwith to return the Goods whereupon the Buyer shall cease to be in possession of them with the consent of the Seller;

(b) to retake possession of the Goods and for that purpose to enter any premises where the Goods are or are reasonably believed by the Seller to be situated.

(v) Notwithstanding the foregoing the Goods shall be the risk of the Buyer alone from the time they leave the Seller's premises.

7 Fitness for Purpose

The Seller gives no warranty that the Goods are fit for the Buyers purpose or purposes. The Buyer warrants that he has satisfied himself that the Goods will be fit for every purpose which he requires them and that he does not rely on any skill or judgement of the Seller in that regard..

8 Acceptance

The Buyer shall inspect and test the Goods immediately upon delivery and shall, within 7 days after delivery, give notice in writing to the Seller of any respect in which he alleges that the Goods are not in accordance with the contract. If the Buyer shall not have given such notice within that time the Goods shall be deemed to be in every respect in accordance with the contract.

9 Liability

This clause shall apply to all claims by the Buyer against the Seller irrespective of whether such claims arise in contract or in tort and whether or not the Seller was negligent.

(a) In the event that notice has been given pursuant to Clause 7 above that the Goods are not in accordance with the contract the Seller shall replace or repair the Goods at his own expense provided that the Buyer has written 30 days after the said notice caused the Goods or part thereof alleged to be defective to be returned at the Buyer's expense to the Seller's premises or such other place as the Seller shall direct.

(b) No other remedy than that provided in the sub-paragraph (a) above shall be available to the Buyer.

(c) Without prejudice to the generality of the foregoing the Seller:

(i) shall not be liable for damages in the nature of or arising from loss of profits, loss of user, loss of revenue, loss of hire or rental in respect of the Goods or any other goods, nor for damages arising from compensation payable by the Buyer to any other person or Corporation whatsoever, and

(ii) shall not be liable for any damages exceeding the purchase price of the Goods.

10 Force Majeure

The Seller shall be relieved of his obligations under this contract insofar as he is hindered in or prevented from performing them by any circumstances whatsoever.

11 Hold Harmless

The Buyer undertakes and agrees to indemnify and hold harmless the Seller against any and all actions for claims, proceedings, costs, losses, expenses, liabilities, including legal fees, whatsoever and howsoever caused or arising out of, connected or resulting from the Goods including without limitation the manufacture, selection, delivery, possession, use, operation, return or any and all damages and injuries caused thereby to anyone whatsoever.

12 Waiver and Invalidity

(a) The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this contract by the other party shall not be deemed a waiver of that term, covenant or condition nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

(b) If any provision in this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in force without being impaired or invalidated in any way.

13 Applicable Law

This contract is given by and interpreted in accordance with English Law and the Buyer submits to the jurisdiction of the High Court of Justice in England, but the Seller may enforce the contract in any Court of competent jurisdiction.

14 Consumer rights not affected

Any provision herein set out shall, to the extent to which it would, by virtue of the Unfair Contract Terms Act 1977, be of no effect as against a person dealing as a consumer, not apply in respect of a sale to a person so dealing.

November 2000