



## HILL & SMITH LIMITED CONDITIONS OF SALE

In these conditions "the Company" means Hill & Smith Limited

### 1. GENERAL

- (1) Any quotation is not an offer, and no contract shall come into existence unless and until the Company has accepted in writing the Buyer's signed official order to supply the goods specified in any quotation.
- (2) If on any point these general conditions are inconsistent with the express terms of this contract the express terms shall prevail subject only to clause 5 hereof.
- (3) If, subsequent to this contract, any contract for sale is concluded with the same Buyer by letter, email, telegram, teleprinter, telex or orally, or by any combination of these, without express reference to these general conditions, it shall be a term of such a contract that these general conditions of sale apply to such contract.
- (4) If any statement or representation has been made to the Buyer, other than in any document which may have been enclosed with the Company's quotation and upon which the Buyer relies, the Buyer must set out that statement or representation in any documents to be attached to or endorsed on its signed order in which event the Company may clarify the point and submit a new quotation.
- (5) Verbal, telephone, telex and telegraphic or tele-message orders will be executed at the Buyer's risk only and must be confirmed in writing and received by the Company within 72 hours.
- (6) Notwithstanding anything contained in the Buyer's conditions of contract relating to any contract between themselves and the Company, or in any subsequent acknowledgement of this contract by the Buyer, the Company's conditions of sale shall apply and take precedence over all other conditions.

### 2. PRICES

Unless fixed prices have been expressly agreed by the Company the price payable by the Buyer shall be the Company's ruling price at the date of despatch of each delivery. Prices include delivery unless otherwise stated and are subject to the addition of V.A.T.

### 3. PAYMENT

- (1) Payment is due in net cash by the end of the month following the month of delivery unless otherwise agreed in writing at the time of acceptance of the order.
- (2) In the case of sums paid to the Company by cheque, payments shall be deemed to have been made when the Company's bank account has been credited with the amount for which the cheque is drawn, and not before.
- (3) The Company reserves the right to charge interest on a monthly basis at a figure equivalent to the current bank lending rate plus three percent (3%) on all monies due but unpaid until such payment has been paid and all accounts cleared to the satisfaction of the Company.
- (4) In the event of any dispute the Buyer shall not be entitled to withhold payment of the price of the goods or any agreed payments or to any right of set-off against any payment due to the Company under this or any other contract.

### 4. TERMINATION

The Company shall be entitled, without prejudice to the Company's other rights and remedies, either to terminate wholly or in part any or every contract between the Company and the Buyer and to suspend any further deliveries in any of the following events.

- (a) Non-compliance by the Buyer with the Company's terms of payment.
- (b) If the customer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the contract.
- (c) If the Company obtains unfavourable reports on the financial standing of the Buyer or if the Buyer becomes insolvent, or has passed a resolution for voluntary winding up or has suffered an Order of the Court for winding up to be made, or has had a Receiver appointed, or suspended payment of debts in whole or in part, or has proposed or entered into any composition or arrangements with creditors, or has had a Receiving Order in Bankruptcy made against it. In the event of any such suspension the Company shall be entitled as a condition of resuming its former liabilities under any contracts between the Company and the customer, to require payment or such security as the Company may require for the payment of the goods and the work provided for in such contract.

### 5. TITLE

- (1) Until payment has been made to the Company of all monies owing to the Company from the Buyer for all goods and items supplied and work carried out under the terms of the contract.
- (a) Any goods and/or items supplied to such Buyer under the terms of the contract shall be held by that Buyer as bailee for the Company and it shall be an express term of this contract that all legal and equitable title in the goods shall remain in the Company until such payments have been made. All express terms of the contract shall be read subject to this clause and in the event of any of the express terms being inconsistent with this clause, this clause shall prevail.
- (b) The Buyer shall permit the servants or agents of the Company to enter on the Buyer's premises and to repossess the goods at any time prior to such payment.
- (2) The Buyer shall only be at liberty to resell the goods purchased from the Company prior to the passing of title on the understanding that if it does resell the goods then it will hold on trust for the Company so much of the proceeds of sale received by it, under contracts which include any of the goods hereby sold either in their original or altered state as are necessary to discharge payment in full to the Company.
- (3) The Buyer shall only be at liberty to mix the goods with others or use them in the process of manufacture prior to the passing of title with the consent of the Company in writing, which such consent shall not be unreasonably withheld providing that suitable guarantees are given by the Buyer to discharge payment in full at the due date under this contract for sale to the Buyer.

### 6. LIEN

In addition to any rights of lien which the Company may have, the Company shall in any of the events described in clause 4 above have a general lien over all goods of the Buyer then in possession of the Company for any monies due to the Company but unpaid.

### 7. DELIVERY

- (1) Any date specified by the Company for delivery is not in any way a guaranteed delivery date and accordingly time shall not be of the essence of the contract and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any such date. (2) The Company will endeavour to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the customer is obliged to take delivery as agreed under the contract. Where postponement is agreed by the Company in writing the Buyer shall if required pay all costs and expenses including a reasonable charge for storage occasioned thereby and any costs incurred by the Company in relation to any insurance payments reasonably made by it.

### 8. GUARANTEE

- (1) Every effort is made to ensure sound materials and good workmanship, but the Company gives no warranty, expressed or implied, of material, workmanship or fitness of goods for any particular purpose, whether such purpose be known to the Company or not. In the event of any material or workmanship proving defective the Company will rectify or replace such material at the place of delivery and in the condition originally specified, or if rectification or replacement is not practicable, will credit the value of the goods at the invoice price, if required in writing to do so, provided always that the claim is made and admitted and the material is returned within 6 months from the date of invoice. The Company's liability in respect of or consequent upon any such defect, whether in original or replaced material or workmanship, is limited as aforesaid and does not extend in any circumstances to cover any other expenditure incurred nor any consequential damages or loss of profit.
- (2) The Company accepts no liability of any kind where any goods have been misused in any manner following delivery.
- (3) Save that the Company does not seek to exclude liability for death or personal injury resulting from the negligence of itself, its servants or its agents, the Company shall not be liable for any direct or indirect costs, damages or expenses or consequential loss relating to damage to property or injury or loss to any person, firm or company, or for any loss of profits or production arising out of or occasioned by any defect in or failure of goods or materials or parts thereof supplied by the Company and the Buyer shall indemnify the Company in respect of all claims made or proceedings taken against the Company by any third party in respect thereof.
- (4) The Company's liability whether in respect of one claim or in the aggregate arising out of any contract shall not exceed the purchase price payable under the contract.

### 9. RISK

Risk in respect of goods shall pass upon delivery. When goods are covered by the Company's own transport, delivery shall be deemed to take place at the moment the goods are lifted from the delivery vehicle. When goods are delivered by other means of transport delivery shall be deemed to take place when the goods are loaded on to the road or rail vehicles used. Delivery shall at all times be on hard roads, only to the address stated on Buyer's order and be subject to Haulage Contractor's Conditions.

### 10. DEFECTIVE DELIVERY AND DAMAGE IN TRANSIT

- (1) No claim for material damaged in transit will be considered by the Company unless:-
  - (a) An appropriately qualified signature, e.g. "Material received damaged, (signed)" is clearly made by the customer on the delivery note, and
  - (b) The Company is advised in writing, in addition to (a) above, within seven days of receipt of material.
- (2) No allowance for claims for short weight will be made unless the Company is given an opportunity for verifying same within three days.

### 11. FORCE MAJEURE

In the event of the performance of any obligation by the Company being prevented, delayed or in any way interfered with by war, riot, civil commotion, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its control the Company may suspend or treat as impossible the performance of any obligation to the Buyer without liability for any loss.

### 12. INDULGENCE TO BUYER

The Company's rights and remedies shall not be prejudiced by an indulgence or forbearance to the Buyer and no waiver by the Company of any breach of the contract by the Buyer shall operate as a waiver of any subsequent breach.

### 13. DESPATCH ABROAD

Goods despatched abroad shall be deemed to have been inspected by the Buyer's agent or representative prior to despatch from the Company's works as no responsibility can be accepted by the Company after goods are consigned for shipment and the Company shall be under no obligation to give the Buyer the notice specified in Section 32 (3) of the Sale of Goods Act 1893.

14. The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract.

### 15. INDEMNITY

The Buyer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings) claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions or specification, whether express or implied.

### 16. LIFTING OR UNLOADING

Bundling of materials is carried out only as a means of identification and/or separation and for safety reasons the bundling wires or strapping must not be used for lifting purposes.

### 17. TESTING AND INSPECTION

- (1) Testing and inspection if specified by the Buyer or his agent shall be at the Company's works and such testing and inspection shall be final and conclusive as to the results thereof.
- (2) The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested by the Buyer and accepted by the Company in writing.
- (3) The Buyer shall pay for all test pieces which comply with specification.

### 18. LITERATURE

Illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

### 19. CANCELLATION

Cancellation of orders, in whole or in part, cannot be accepted without the consent in writing of the Company and on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Company forthwith.

### 20. APPLICABLE LAW

The construction validity and performance of this contract shall be governed by the laws of England, and the Buyer hereby expressly submits to the jurisdiction of the English Courts.