

Conditions of Sale

- 1. Parties**

In these conditions "The Company" means Cubis Industries and "The Buyer" means the person, firm, company or organisation specified in the order.
- 2. Conditions Applicable**

Unless otherwise agreed in writing by the Company, goods are supplied by the Company only on these conditions. Should any of these conditions conflict with any conditions stated in the Buyer's order or otherwise, then these conditions shall prevail. Should any part of these conditions, or any of the individual parts of the conditions be found to be unenforceable then such part shall be severed from the remainder of the contract which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 3. Quotations**

Any quotations given by the Company do not constitute contractual offers. Such quotations are valid for a period of 30 days.
- 4. Price**
 - 4.1 All Prices quoted by the Company are exclusive of VAT unless otherwise stated. VAT or any other tax or duty relating to the sale or delivery of the goods shall be added to the price payable by the Buyer.
 - 4.2 All price quotations are calculated from costs applicable at the date of such quotation. If there is any increase in such costs between the date of quotation and despatch, then the Company may increase the price payable by the Buyer.
 - 4.3 Where a price has been quoted for a quantity or number of goods, then the Company reserves the right to appropriately increase the price in the event of only part quantity or part number of goods being ordered.
- 5. Delivery**
 - 5.1 If the goods are offered for sale by the Company for delivery to site, then the Company shall deliver as near to the site as a safe hard road permits. The Buyer shall provide free of charge all labour and equipment required for unloading and stacking the goods delivered.
 - 5.2 The Company will use all reasonable endeavours to deliver the goods on the date specified in the order but such dates are not guaranteed unless expressly so stated by the Company in writing. The Company shall not be liable in respect of any claim arising out of or consequent to a failure on the part of the Company to meet such date and such failure shall not entitle the Buyer to refuse delivery, repudiate or cancel the contract.
 - 5.3 Should the manufacture or delivery of any of the goods be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lockouts, industrial disputes, shortage of raw materials or fuel, shortage of labour, breakdown or partial failure of plant or machinery, late receipt of necessary information from the Buyer, acts, orders or regulations of government, delay on the part of any independent sub-contractor or supplier of any cause whatsoever beyond the reasonable control of the Company, then the time for the delivery of the goods shall be extended for a reasonable period.
 - 5.4 Where the contract provides for the delivery of the goods rather than collection from the Company's producing premises, then the Company will only entertain a claim by the Buyer in respect of loss or damage in transit if the Buyer:
 - (a) gives written notice to the Company within 14 days after the date of the Company's advice note, or other notification of the dispatch of goods in case of non-delivery, or within 3 days after the delivery of the goods in any other case, and
 - (b) where the goods are consigned to an outside Carrier, the Buyer complies in all respects with the Carriers conditions of carriage for notifying claims for loss or damage in transit.
 - (c) Delivery shall be deemed to take place either:
 - (i) on the physical handing over of the goods to the Buyer or to his designated carrier or agent; or
 - (ii) on the removal of the goods from the Company's premises when the company shall at the request of the Buyer, agree to transport the goods by its own transport or by carriers designated by the Company; or
 - (iii) upon the placing of the goods in the Company's own storage facilities either at the request of the Buyer or upon his failure or refusal to accept delivery.
- 6. Risk**

The risk in the goods shall pass to the Buyer upon delivery of the goods, which shall be deemed to take place in accordance with Clause 5(4) and the Company shall thereafter incur no liability whatsoever, save for damage to the goods caused by the negligence of the Company, in which event the Company's liability shall be limited to the value of the goods.
- 7. Time for Payment**

All sums due from the Buyer shall be paid by the last day of the month of delivery, in accordance with Clause 5(4)(c) hereof. In default the Company shall be entitled to take the following steps:
 - (a) Suspend delivery under all or any contracts with the Buyer and/or
 - (b) Forfeit the Buyer's right to discount (if any) and charge the Buyer interest at the rate of 2 per cent per annum above the rate of Bank of Ireland on the sum outstanding, such interest to be calculated from day to day from the date upon which payment became due to the date of actual payment and/or
 - (c) If such payment shall remain in arrears for more than 14 days after written demand shall be made, therefore the Company shall have the right to sell to third parties any goods awaiting delivery to the Buyer hereunder or under any other contract and in any case without prejudice to any claim by the Company against the Buyer for wrongful repudiation of the contract or otherwise.
- 8. Retention of Title**
 - 8.1 The goods shall remain the property of the Company and are held by the Buyer as bailee, until all sums due and payable by the Buyer to the Company have been paid.
 - 8.2 Without prejudice to the generality of the previous sub-clause, the goods shall remain the property of the Company and be held by the Buyer as bailee, until payment in full for those goods has been received by the Company.
 - 8.3 Until payment in full for the relevant goods has been received by the Company the Buyer shall:
 - (a) Keep the goods marked and/or separately stored so as to be clearly identifiable as the Company's property and
 - (b) Keep the goods insured to their full market value provided always that the risk of loss or damage to the goods shall pass to the Buyer in accordance with Clause 6 hereof.
 - 8.4 Nothing in this clause shall prevent or restrict the Buyer from selling the goods subject to the following conditions:
 - (a) The Buyer is only entitled to sell the goods in the ordinary course of business on commercially reasonable terms and at a price no less than the price payable by the Buyer to the Company for the goods.
 - (b) In re-selling the goods the Buyer will be acting as the Company's agent but must re-sell in his own name.
 - (c) When re-selling the goods the Buyer shall be under the fiduciary duty to account to the Company for the proceeds of such sale and the proceeds of any re-sale of the goods shall be held by the Buyer on behalf of the Company and not be paid into any overdraft bank account but retained separately.
 - (d) The buyer shall record each sub-purchaser of the goods including the name and address and the date and the price of each delivery and shall if the Company so requests assign in writing such claims as the Buyer may have against any such sub-purchaser in respect of such goods for non-payment thereof.
 - (e) If the Buyer sells the goods prior to payment being made to the Company then the Buyer shall indemnify the Company against all claims by third parties in respect of the goods.
 - 8.5 The Buyer hereby grants the Company a right to enter on any premises where the goods are stored for the purpose of taking possession of and removing goods in which property remains in the Company and all costs and expenses reasonably incurred by the Company in connection with such recovery shall be paid by the Buyer.
 - 8.6 It is hereby declared for the avoidance of doubt that the Company may recover any goods not paid for and payment shall become due if:
 - (a) the Buyer does or fails to do anything which would entitle a receiver to take possession of any of its assets or which would entitle any person to present a winding up or bankruptcy petition against the Buyer and/or
- (b) the Buyer if a Company passes any resolution to be wound up or presents its own winding up or bankruptcy petition or publishes a notice convening a meeting of its creditors pursuant to Section 588 of The Companies Act 1985 or any statutory modification or replacement thereof.
- 8.7 In the event of a trustee in bankruptcy, a receiver or a liquidator being appointed in respect of the Buyer then the Buyer shall in writing identify to that person all goods in the Buyers possession which remain the property of the Company.
- 9. Delivery by installments**

Where delivery is by installments each installment shall be deemed to form a separate contract and non or late delivery of any installment shall not effect the balance of the contract or entitle the Buyer to cancel the same.
- 10. Storage**
 - 10.1 If for any reason the Buyer fails or refuses to accept delivery of the goods or any part thereof, the Company may at its discretion store the goods and take reasonable steps to safeguard and preserve them until actual delivery.
 - 10.2 Storage of the goods in accordance with this clause shall be at the Buyer's risk and expense.
 - 10.3 If the Buyer fails to take delivery of the goods within 28 days of notification that they are ready for delivery or, having been stored that storage facilities are no longer available, then the Company shall have the right to sell, dispose of or otherwise deal with the goods and the Buyers shall be liable to the Company for all loss (including loss of profit) or damage which the Company shall suffer in consequence of the Buyer's failure to take delivery of the goods or of such sale.
- 11. Brochure and Design**

Unless specifically stated by the Company in writing to be accurate all sizes and details in respect of goods referred to in price lists estimates and brochures are approximate only and samples are submitted as indicating only the type of material quoted for and no guarantee is given as to size colour or quality of the bulk other than that they will comply with the appropriate British Standard where applicable. Further the Company reserves the right after the specification of any goods without prior reference to the Buyer or to cease to manufacture any goods, provided that the goods comply substantially in all other respects with the Buyer's known requirements and any such variation or substitution on reasonably equivalent materials or goods or finished shall not give rise to a claim against the Company.
- 12. Inspection**

Where the contract stipulates for test or inspection of the goods by or on behalf of the Buyer before delivery and on reasonable notice, the Buyer does not inspect to test the goods or if, having inspected or tested the goods at the producing works the Buyer does not within seven days thereafter notify the Company in writing of any claim that the goods do not conform with the contract, specifying the matters complained of, then the Buyer shall be conclusively deemed to have accepted that the goods conform with the contract.
- 13. Warranty**
 - (a) Goods sold by the Company are warranted free from defects in materials or workmanship for a period of 3 months from the date of delivery subject to the exclusions set out below.
 - (b) The Company shall not be liable for:
 - (i) any defect in the quality or state of the goods which would not be apparent on a reasonable examination or for the goods being otherwise not in accordance with the contract unless the Buyer shall have given to the Company within 14 days after the receipt of the goods a written notice.
 - (ii) any defects in the quality or state of the goods which would not be apparent on a reasonable examination, unless such defects shall have been discovered within 3 months after the receipt of the goods and the Buyer shall have given to the Company forthwith upon such discovery a written notice.
 - (iii) any written notice given pursuant to sub-clause (i) or (ii) above shall specify the matters complained of and the Buyer shall thereafter afford the Company a reasonable opportunity of inspecting the goods in their allegedly defective state.
 - (c) The Warranty given in sub-clause (a) of this clause shall not apply to:
 - (i) any goods which have been tampered with or stored in unsuitable conditions or for an excessive period or subjected to misuse negligence or accident or
 - (ii) any claim arising from unfitness of the goods for their purpose it being the sole responsibility of the Buyer to ensure that the goods ordered are fit for the purpose intended.
- 14. Limitation of Liability**
 - 14.1 Except as previously stated above all other warranty conditions and representations (to the extent that they may in law be excluded) are hereby excluded.
 - 14.2 Save as provided in sub-clause (3) below the Company shall not be liable in contract, tort or otherwise for any loss damage arising out of or in connection with the use of failure of the goods or any defect in them provided always that it shall accept:
 - (a) liability in respect of death or personal injury arising out of the Company's negligence.
 - (b) liability limited to the value of the goods supplied by the Company in respect of other loss or damage arising out of the Company's negligence.
 - 14.3 The Company will in full satisfaction of any liability hereunder for defective or damaged goods as its option either supply replacements of or repair the faulty goods or repay or allow the Buyer the invoice price thereof and any transport costs between the Company's producing works and the place of delivery borne by the Buyer.
 - 14.4 The limitation of liability herein contained shall in no way affect such consumer rights (if any) as the Buyer may have under the Sale of Goods Act 1979 as amended.
- 15. Set Off and Counterclaim**

The Buyer shall not be entitled to withhold payment of any amount under the contract to the Company because of any disputed claim of the Buyer in respect of faulty goods or any other alleged breach of the contract, nor shall the Buyer be entitled to set off against any amount payable under the contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability. The Seller is entitled to set off any amount due to the Buyer from the Seller against any amount due to the Seller from the Buyer under this contract.
- 16. Northern Ireland Law**

Every contract to which these terms and conditions shall be construed in accordance with and governed in all respects by the laws of Northern Ireland and the Company and the Buyer submit irrevocably to the jurisdiction of the Northern Ireland Courts.
- 17. Suitability of Goods**

The utmost care is taken to ensure the accuracy of any information, data and advice provided to the Buyer, by the Seller but all such information is given for general guidance only and any such information given to him is not deemed to form part of any contract or the sale of the Goods, and it is the obligation of the Buyer to satisfy himself that any Goods ordered are of a type and performance satisfactory for his particular requirements.
- 18. Default**
 - 18.1 If the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a Company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an emburances takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
 - 18.2 the Buyer ceases or threatens to cease to carry on all or any substantial part of its business; or
 - 18.3 the Buyer shall commit any material breach of these conditions without prejudice to any other right or remedy available to the Seller the Seller may cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer and if all or any of the Goods have been delivered but not paid for the price shall become immediately due and payable.
 - 18.4
- 19. Patents and Trade Marks**

No representation, warranty or indemnity is given by the Seller that the goods do not infringe any letters patent, trade marks, registered designs, or other industrial rights.