

Conditions of Sale

GENERAL

1. In these conditions 'the Seller' means Colsec Limited, Droitwich, Worcs., and 'the Buyer' means the person(s) named as the buyer(s) in the Seller's Order Acknowledgement/Estimates and 'the Goods' means the Coldroom and Coldstore Panels and parts specified in the Seller's Order Acknowledgement/Estimates.

2. (a) Neither the buyer's acceptance of any quotation or tender of the Seller nor the order(s) of the Buyer shall institute a contract until such acceptance of order has been acknowledged by the Seller's Order Acknowledgement Form.

(b) Contracts are made, orders accepted and Goods Delivered by the Seller only upon and subject to the conditions herein printed.

(c) No statements, promises or representations of any kind (whether contained in the Seller's catalogue, sales literature or otherwise howsoever) made before, or at the time of giving of any order or the making of the contract and no qualifications or annulment of any of these Conditions contained in the Buyer's order, after acceptance or confirmation of contract forms or in correspondence shall be part of or affect the terms of the contract unless such qualifications or annulment is expressly confirmed in writing in the Seller's Order Acknowledgement Form.

3. DRAWING, ETC

(a) All sketches, drawings and specifications relating to weights, dimensions and performance contained in the Seller's catalogues, price lists, and other advertising matter are intended merely to present a general idea of the Goods described therein and none of these shall form part of the contract unless specifically agreed in writing.

(b) The Seller reserves the right to make minor alterations or improvements in design or methods of manufacture without notice.

(c) All tenders, plans, drawings, specifications and other documents are the Seller's copyright and remain the property of the Seller, must not be reproduced or disclosed to third persons and be returned to the Seller on demand.

(d) All patent and design rights shall remain the property of the Seller.

4. NON-ASSIGNABILITY

Every contract between the Seller and the Buyer as principals and is not assignable without the consent of the Seller.

5. PRICE

The accepted price will be based on the cost to the Seller of materials, labour, transport and of conforming to statutory obligations at the date of such acceptance, if between that date and the termination of the work, variations either by rise or fall occur in these costs then the price may, at the Seller's option, be amended to provide for these variations. No cash or trade discounts will be allowed unless expressly agreed.

Prices quoted do not include VAT or any other applicable taxes unless such taxes are specifically mentioned.

6. TERMS OF PAYMENT

(a) Unless otherwise indicated in the Seller's Order Acknowledgement Form the Seller will invoice the Goods when they are available for delivery and payment shall be due 30 days following invoice.

(b) Interim invoices shall be submitted by the Seller as work proceeds on contracts to a value of not exceeding 90% of the value of work in progress and materials delivered to site. Certificates and invoices to be honored within 7 days unless by any other arrangement in writing and agreed between the Seller and the Buyer. Payment of final balance on any contract shall be due 30 days following invoice.

(c) The Seller may demand payment in advance in whole or in part.

(d) If the Buyer fails to make any payment within four weeks of the due date for that payment all sums payable to the Seller under this and any other contract between the Buyer and the Seller shall become immediately due for payment without regard to the time of payment of any outstanding bill of exchange or other deferred terms for that other contract.

(e) All moneys are payable in pounds sterling of the rate of exchange (where applicable) prevailing on the date of payment and are to be paid without any deduction.

(f) Where payment is delayed beyond the date specified for payment the buyer shall pay interest on any sums remaining unpaid at the rate of 4% above base lending rate of National Westminster Bank Plc for the time being from the date so specified for payment until date of actual payment as well after as before any judgement.

The Seller may in addition require payment in advance of any amount outstanding or to become payable under the contract and of any payment under any other contract without regard to the terms of that contract.

7. TITLE

Until payment in full has been received by the Seller of all sums owing or due to the Seller in respect of the Goods the Buyer holds Goods in a fiduciary capacity as bailee for the Seller and:

(a) legal and beneficial title in the Goods shall remain with the Seller and if the Seller requires the Buyer shall store the Goods in such a way that they are clearly the property of the Seller and shall maintain full insurance cover against loss or damage in respect thereof:

(b) The Seller reserves the right of disposal of each item of Goods and may retake possession thereof at any time and for that purpose may be its servants or agents enter upon any land or premises occupied by the Buyer:

(c) the Buyer undertakes in relation to each item of the Goods not to remove parts from, add to, modify or otherwise do any work on such Goods without the express prior written permission of the Seller:

(d) If the Buyer incorporates or allows the incorporation of an item of the Goods into other goods in any way, legal and beneficial title to those other Goods, both during the process of incorporation and thereafter shall vest forthwith in the Seller and the Buyer shall hold them in fiduciary capacity as bailee for the Seller; if the Seller so requires the Buyer shall observe the conditions regarding storage in subclause (a) hereof as if such other goods were the goods originally supplied and the Seller reserves the rights regarding disposal, repossession and entry in subclause (b) hereof as if such other goods were the good originally supplied.

8. LIEN

Until all outstanding invoices rendered to the Buyer by the Seller are paid in accordance with clause 5 above the Seller shall have a general lien (in addition to any other right or remedy open to the Seller) upon any goods of the Buyer from time to time in the Seller's possession or control and the Seller may enforce such lien by selling the goods or a sufficient quantity of such goods to relies all amounts then due to the Seller under this contract or otherwise and appropriating the same.

9. DELIVERY PERIOD

Although every effort will be made to deliver on the quoted date, any failure to do so shall not amount to a breach of contract.

Any lack of information or alterations to specification after the date of contract may cause delay in delivery.

10. DELIVERY

(a) The delivery period shall not begin to operate until the Buyer has submitted all necessary specifications and other technical detail and produced all documents, licences and other authorizations to be obtained by the Buyer, paid any deposit, and accepted these Conditions of Sale.

(b) Delivery is effected within the delivery period if within that time

(i) The goods have left the Seller's factory, or

(ii) The Buyer has been notified that the goods are ready for despatch.

(c) Partial deliveries are permitted.

(d) The periods or dates for delivery shall be business estimates only and not contractual obligations of the Seller. The Seller will make every endeavour to maintain such estimates but does not accept any liability for loss or damage howsoever arising by reason of failure to do so.

(e) If any delivery is delayed by the fault of the Buyer the Seller may charge the Buyer reasonable storage charges and may, after giving the Buyer reasonable notice, dispose of the goods and recover from the Buyer all losses and expenses howsoever incurred by reason of the Buyer's failure to take delivery.

(f) If any delivery is delayed due to the lack of clear access for placing of the Goods, the Seller may charge the Buyer an extra to cover for this delay.

(g) If any delivery is not accepted when delivered in accordance with the Buyer's instructions, then the cost involved by the Seller in making other arrangements will be charged to the Buyer as an extra.

11. DAMAGE IN TRANSIT

No claim for any damage to the goods in transit will be considered by the Seller unless written notification is received from the Buyer within seven days of delivery of the Goods.

12. PACKING

Unless otherwise specified in the contract all packing cases and crates remain the property of the Seller and must be returned to the Seller in good condition, within one month from date of receipt, otherwise they will be charged for.

13. ERECTION

The Buyer will provide or cause to be provided, suitable access to and possession of the site and a level base of adequate strength ready to receive the Goods. Also, following delivery on site, facilities for storage of plant and the materials necessary for carrying out the work shall be provided by the Buyer or at the Buyer's direction, including the free use of adequate lighting, water and electricity.

14. EXTRA COST

Should the Seller incur extra cost due to the Buyer's instructions or lack of instructions involving the Seller in delays, overtime, interruptions, unusual hours, mistakes or work for which the Seller is not responsible, such extra cost as well as the cost incurred of keeping any of the Seller's men on the site after the completion of the contract shall be added to the contract price.

15. ACCEPTANCE OF THE GOODS

The Goods shall be deemed to have accepted by the buyer on the date when either:

(i) Erection on site is completed or the Goods shall put into commercial use, whichever may be the earlier, or

(ii) in the case of pre-assembled Goods when delivery has been made to an address in accordance with delivery instructions unless the Seller receives within 15 days of such date written notification with sufficient and valid reasons that the goods do not comply with the contract

(iii) For the purposes of this clause no account shall be taken for additions, minor omissions or defects which do not materially affect the commercial use of the goods.

16. GUARANTEE AND GENERAL LIABILITY

(i) The Seller will at its own expense repair, or at its discretion replace the goods, or any part thereof, which are proved, to the reasonable satisfaction of the Seller, to have been defective in material or

workmanship at the time of acceptance of the goods by the buyer provided that:

(a) Written notice of each such defect is given to the Seller within six months from the time when the goods are put into operation by the Buyer and in any event within twelve months of the delivery of the goods to the Buyer.

(b) The equipment is installed and commissioned to the satisfaction of the Seller.

(c) The Seller is given full opportunity to investigate and inspect the goods and defective parts thereof

(d) The Seller does not accept responsibility for defects or damage caused or contributed to by:

(i) unsuitable or careless care of handling or faulty erection installation or assembly or operation by the Buyer (or any other person other than the Seller or its employees), or

(ii) normal wear and tear, or

(iii) failure to operate the goods in accordance with the Seller's operational or maintenance manuals or written or oral instructions (if any) or otherwise in a reasonable manner, or

(iv) any alteration, additional to or adaption of the goods made without the written approval of the Seller, or

(v) defect occurring in or damage caused by goods or parts of goods manufactured by persons other than the Seller (whether supplied separately or incorporated in the goods) except to the extent to which the Seller actually received indemnity without legal expenses from such persons.

(e) The Buyer shall give the Seller such time to effect all such repair and substitutions as the Seller considers necessary to implement this guarantee.

(f) The Seller may refuse to fulfil this guarantee or any part thereof if and so long as the Buyer does not fulfil its contractual obligations under this or any other contract subsisting between the Seller and the Buyer.

(ii) The Seller's liability is limited to exchange and repair in accordance with clause 16 (i) of these conditions. Every other form of liability for any kind of loss or damage (consequential or otherwise) arising out of the sales, use or operation or failure to operate of any goods or parts supplied by the Seller is expressly excluded. Accordingly all orders are accepted and goods supplied on the basis that the Seller is under no liability except as herein undertaken and that such liability in lieu of and to the exclusion of every condition or warranty whatsoever, statutory or otherwise, expressed or implied not expressly stated herein.

17. IMPRINTS

Where the Seller's patents registered designs and copy-right features are embodied in the design of the goods an imprint to that effect may be affixed and it must not be defaced, obliterated or removed. Unless otherwise agreed, the Seller shall be entitled to write or affix its name or trade plate on the goods.

18. FORCE MAJEURE

(a) If the performance of the contract or any obligation thereunder is prevented by force majeure, the Seller shall be excused performance, provided that the Seller shall use its best endeavours to remove such cause(s) or non-performance and shall continue performance thereunder without delay whenever such cause(s) are removed.

(b) For the purpose of these conditions, the term 'Force Majeure' includes acts of God, strikes, lock-outs, fire, accident, lightning earth quakes, storms, floods, explosion, war and any other circumstances, whether similar or dis-similar beyond the reasonable control of the Seller.

19. TERMINATION

If the Buyer commits any breach of the terms and conditions of the contract, or suffers distress or execution, or becomes insolvent, or commits an act of bankruptcy, or enters into any arrangement or composition with his creditors, or goes or is put into liquidation (other than solely for amalgamation or reconstruction), or if a receiver is appointed over any part of the Buyer's business, the Seller may, without prejudice to any rights which may have accrued to him, terminate the Contract summarily by notice in writing.

20. MARINE INSURANCE

Where goods are sent by a route involving transit by water the Seller is not required to give any notice to the Buyer to enable the Buyer to insure the goods during such transit.

21. VARIATION OF CONDITIONS

No notification of or addition of these conditions of sale shall be effected by the acknowledgment of the Buyer's purchase order containing additional or different provisions.

22. CANCELLATIONS

A charge will be made by the Seller for cancellation of any contract by the Buyer after receipt of the Seller's Order Acknowledgement Form.

23. WAIVER

Failure by the Seller to insist upon strict performance of the terms and conditions of this contract shall not be deemed a waiver of any subsequent default hereof.

24. NOTICES

Any and all notices given under this contract shall be in writing and sent by first class post to the registered or principal office of the person to whom it is addressed and shall be deemed to have been received in the case of the Buyer having its registered or principal office in the United Kingdom two working days after the date of posting thereof and in the case of the Buyer having its registered or principal office outside the United Kingdom six working days after the date of posting thereof.