



LIMETEC LIMITED - CONDITIONS OF SALE

Definitions

- The following definitions apply in these conditions of sale ("the Conditions").
- Limetec Limited, a company incorporated in England with registration no. 097 095 74 whose registered office is at Office 2 5A Grove Street, Wantage, Oxfordshire, OX14 7AB is referred to as "the Company".
- "the Carrier" means the third party instructed to deliver the Goods on behalf of the Company.
- "the Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods, comprising these Conditions and an "Order Acknowledgement" issued by the Company (where one has been issued) and the Company's quotation (where one has been issued and so far as not inconsistent with any Order Acknowledgement).
- "the Customer" means the person, firm or company purchasing the Goods from the Company.
- "Defect" means a material non-compliance of the Goods with the Specification or an aspect in which the Goods are not of satisfactory quality (as that term is defined in the Sale of Goods Act 1979 as amended), and "defective" shall be construed accordingly.
- "the Delivery Point" means the place where delivery of the Goods is to take place as referred to in clause 6a.
- "Ex Works" means to be collected from Grindle House Farm, Grindle Road, Grindle, Near Shifnal, Shropshire, TF11 5JR or such other place of collection stated in the Contract.
- "the Goods" means any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them) as described in the Contract ("the Specification").

Contract formation

2.a. A Contract shall only arise in one of three ways:

- acceptance of the Customer's order by issue of a formal Order Acknowledgement by the Company;
- acceptance of the Company's quotation; or
- the Customer accepting delivery of the Goods at the Delivery Point, or collection of the Goods Ex Works.

Subject to any variation under Condition 2b, these Conditions shall apply to all Contracts for the sale of Goods by the Company to the Customer to the exclusion of all other terms and conditions (including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order, specification, correspondence or any other document). Each order or acceptance of a quotation or acceptance of delivery or collection of Goods by the Customer shall be deemed to be done on these Conditions.

- Any variation to the Contract shall have no effect unless expressly agreed in writing and any change to these Conditions must be signed by a director of the Company.
- All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures or catalogues are issued or published for the sole purpose of understanding the general (not contract specific) nature of the goods described in them. They do not form part of the Contract unless expressly included in the Specification. Unless expressly stated to be so in the Contract, this Contract is not intended to be subject to any such documents.
- The Customer acknowledges that it has not relied on any recommendation, suggestion, statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- a. Not order submitted by the Customer is accepted by the Company unless and until a written Order Acknowledgement is issued by the Company or (if earlier) the Goods are delivered to the Customer or released to the Customer Ex Works with the Company's consent. Except as otherwise provided for in these Conditions, the Customer may not cancel or postpone any Contract without the prior agreement of the Company in writing and, in such the Customer agrees to promptly reimburse the Company for all costs, charges, losses and expenses accrued and/or incurred by the Company as a result of said cancellation or postponement.
- b. Any quotation provided by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. Acceptance of delivery of Goods or collection of Goods by the Customer after receipt of a quotation shall be deemed acceptance of that quotation.
- c. The quantity and description of the Goods shall be as set out in the Contract. The Customer must ensure that the Specification is complete and accurate and suitable for its purpose. The Customer must satisfy itself that the Specification and quantities of Goods stated in the Contract are appropriate for its needs. A return of unused Goods will not be accepted. A quantity stated in the Contract is a commitment to purchase that quantity and (unless clearly stated to the contrary) a contract cannot be treated as a call off contract for the Customer to call off requested deliveries up to the quantity stated and when required. If a call off arrangement is expressly agreed within the Contract (unless indicated to the contrary) the period for call is limited to one month.

Payment

- a. Unless otherwise agreed by the Company in writing, the price of the Goods shall be the price set out in the Company's price list in force on the date of delivery or deemed delivery.
- b. Unless credit terms have been expressly confirmed in writing by the Company, delivery to the Delivery Point or collection Ex Works shall not be made until payment of the price for the Goods (and any applicable delivery charge) has been received by the Company and payment shall be made on the date for payment stated in the Contract (apart from these Conditions) or if not there stated at least two working days prior to the agreed delivery date. Where delivery price is agreed as part of the Contract the price for delivery is payable at the same time as payment for the Goods. Where credit terms have been expressly confirmed in writing by the Company and payment after delivery has been expressly agreed by the Company, the Company will invoice the Customer for the price and other sums payable (so far as ascertained at that point) on dispatch of the Goods or collection of the Goods by the Customer and the Customer will make payment in pounds sterling within 30 days of the date of dispatch by the Company or collection of the Goods by the Customer. Time for payment shall be of the essence.
- c. The Company reserves the right, by giving notice to the Customer at any time before delivery or deemed delivery or collection, to increase the price of the Goods in order to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as alterations of duties or significant increase in the costs of labour materials or other costs of manufacture) or any change (including, without limitation, in the delivery dates, place or access for delivery, quantities or specifications of the Goods) requested by the Customer or any delay caused by the Customer, provided that in the event of such proposed price increase, where the increase does not arise from the Customer's request or delay, the Customer may cancel the Contract prior to despatch of the Goods.
- d. The price and all other sums payable in respect of the Goods shall be exclusive of any Value Added Tax.
- a. Subject to any specific provision in the Contract relating to the time for payment of any amount, where sums become payable to the Company, the Company will invoice the Customer and the Customer shall make payment in pounds sterling within 30 days of the date of receipt of the invoice (or a copy of it by email, if earlier).
- b. No payment shall be deemed to have been received until the Company has received cleared funds, and all payments payable to the Company under the Contract or on any other account shall become due immediately on its termination notwithstanding any other provision.
- c. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount in accordance with such deduction to be paid by the Company to the Customer.
- d. If the Customer fails to make any payment due under the Contract by the due date or otherwise in accordance with the Contract, the Company reserves the right to do one or more of the following:
 - suspend performance of its obligations under the Contract or any other contract with the Customer; and/or
 - terminate the Contract and/or any other contract with the Customer; and/or
- e. charge the Customer interest on the outstanding sum from the due date for payment at the annual rate of 8% over the base lending rate quoted by Barclays Bank plc from time to time, accruing on a daily basis until payment is made in full, whether before or after any judgment and charge all costs incurred in seeking or obtaining recovery of the outstanding sum; and/or
- f. cancel any agreed credit terms such that all sums in respect of Goods delivered or collected shall become immediately payable and no further Goods shall be delivered or collected until payment of all sums owing has been received.

Delivery

- a. Unless otherwise agreed in writing the Goods are sold Ex Works. Where the Company has agreed to deliver the Goods delivery of the Goods shall be made by the Carrier to the Delivery Point which shall either be the Customer's premises or such other place as is agreed by the parties. Unless a delivery cost is agreed in the Contract, where the Goods are under the Contract to be delivered to the Delivery Point the Customer will pay all delivery costs, charges and expenses incurred by the Company plus 10% in addition to the price of the Goods, and the Company (such as alterations of duties or significant increase in the costs of labour materials or other costs of manufacture) or any change (including, without limitation, in the delivery dates, place or access for delivery, quantities or specifications of the Goods) requested by the Customer or any delay caused by the Customer, provided that in the event of such proposed price increase, where the increase does not arise from the Customer's request or delay, the Customer may cancel the Contract prior to despatch of the Goods.
- b. In the event that the Company or the Carrier feel that safe, suitable and easy access to the Delivery Point has not been provided by the Customer at the time of delivery, the Company or the Carrier reserves the right to refuse to deliver the Goods and the provisions of Condition 9 shall have effect. Should the Company or the Carrier incur any additional costs, charges or expenses because of difficulties in accessing the Delivery Point the Customer shall promptly reimburse the Company and/or the Carrier (as the case may be) in respect of all such additional costs, charges or expenses.
- c. Any delivery dates specified by the Company are intended to be an estimate only and time for delivery of the Goods shall not be made of the essence by notice. If no dates are so specified, delivery of the Goods shall be within a reasonable time. Delivery shall usually take place on a working day during normal working hours, although alternative dates and times may be agreed at an additional cost.
- d. The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods (even if caused by the Company's negligence) nor shall any delay entitle the Customer to refuse to accept the Goods or terminate or rescind the Contract unless such delay exceeds 180 days.
- e. If the Company or Carrier delivers to the Customer a quantity of Goods of up to 5% more or less than the Contract quantity, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate. No right to reject Goods for any shortfall over 5% shall arise unless the Company does not make up the shortfall by further instalments) within a reasonable time of the extent of the shortfall being notified to the Company.
- f. The Company or Carrier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
7. Unless the Company has agreed in writing to the contrary with the Customer:
 - a. Neither the Company, nor the Carrier shall be under any obligation to provide any equipment, power or labour required for loading or unloading the Goods at the Delivery Point.
 - b. Adequate and appropriate equipment, power and labour required for loading or unloading the Goods at the Delivery Point shall be provided by the Customer at its sole risk and expense.
 - c. Neither the Company, nor the Carrier shall have any liability whatsoever to the Customer or any third party for any injury, damage or loss, however caused, resulting directly or indirectly from the Customer's failure to comply with its obligations under Condition 7b.

Acceptance of Goods

- a. The Customer shall satisfy itself as to the condition and quantity of the Goods at the time of delivery and it shall be the sole responsibility of the Customer to inspect the Goods at the time of delivery. The Company shall not be liable for any damage to the Goods or Defect apparent at the time of delivery (even if caused by the Company's negligence) unless the Customer gives written notice of the damage or Defect to the Company or Defect to the Company within the time of delivery. In the absence of any such notice being received by the Company within the prescribed 5-day period, the Goods will be deemed to have been accepted by the Customer. The Company shall not be liable for any damage to the Goods occurring after their delivery.
- b. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- c. Any liability of the Company for non-delivery of Goods, or shortage of Goods, or damage to the Goods, or Defect apparent at the time of delivery, shall be limited to sending the missing Goods or replacing the relevant Goods within a reasonable time of being notified of the problem or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

Risk and ownership

9. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company or Carrier is unable to deliver the Goods to the Customer because the Customer has not provided appropriate access, instructions, documents, licences or authorisations:
 - risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's or Carrier's negligence);
 - the Goods shall be deemed to have been delivered; and
 - the Company and/or Carrier may store the Goods until delivery, whereupon the Customer shall be liable for all related charges, costs and expenses (including, without limitation, carriage, storage and insurance)
 - and the Customer shall pay the cost of waiting time.
10. a. The Goods are at the risk of the Customer from the time of delivery.
- b. Ownership of the Goods will not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or become due to the Company from the Customer on any account.
- c. Until ownership of the Goods shall have passed to the Customer, the Customer will: hold the Goods on a fiduciary basis as the Company's bailee; store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- d. On request the Customer shall produce the policy of insurance, evidencing insurance as referred to in c above, to the Company.
- e. The Company may terminate the Contract and/or any other contract with the Customer and/or suspend performance of its obligations under the Contract or any other contract with the Customer, and the Customer's right to possession of the Goods shall terminate immediately, if:
 - i. the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except as a solvent liquidator for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - ii. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer; or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - iii. the Customer encumbers or in any way charges any of the Goods.
- f. The Customer shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- g. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.
- h. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- i. On termination of the Contract, however caused, the Company's (but not the Customer's) rights contained in this Condition 10 shall remain in effect.

Warranty

11. a. Where the Company is not the manufacturer of the Goods and the manufacturer offers a warranty for onward transmission to customers, the Company shall endeavour to transfer to the Customer the benefit of any such warranty.
- b. Subject to the provisions of these Conditions and the Customer's performance of its obligations under the Contract, the Company warrants that on delivery the Goods will be free from material Defects.
- c. The Company will not be liable for a breach of the warranty set out in Condition 11b unless:
 - i. the Customer has notified the Company within 5 days of discovery of the Defect; and
 - ii. the Company is given a reasonable opportunity after receiving the notice to examine such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there. Where the Company acknowledges its liability for the warranty, it will reimburse the reasonable costs of carriage to the Customer.
- d. The Company will not be liable for a breach of the warranty set out in Condition 11b if:
 - i. the Defect arises from fair wear and tear, or any specification, designs, materials or workmanship furnished by or on behalf of the Customer; or
 - ii. the Defect arises because of the Customer's wilful damage, breach of the Contract, negligence, working conditions or failure to follow the Company's oral or written instructions as to the storage, handling, installation, commissioning, use or maintenance of the Goods (where there are no "good trade practice" instructions or where the instructions are not followed); or
 - iii. the Company has no liability in respect of the quality, suitability or description of Goods. Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract to the fullest extent permitted by law.
- e. Whilst the Company will make reasonable efforts to ensure consistency and uniformity of the Goods, the Customer accepts and agrees that such consistency and uniformity will not be guaranteed or warranted by the Company, for example (but without limitation) where pigments or other specialist materials (eg brick dust) have been used due to natural variations within the Goods and/or due to the influences varied working conditions and/or practices may have upon the Goods.
- f. Subject to Conditions 11c and 11d, if any of the Goods do not conform with the warranty in Condition 11b, the Company shall at its option repair or replace the Goods (or the defective part thereof) free of charge and/or return the Customer the price of such Goods at the pro rata Contract rate, provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or part of such Goods which is defective to the Company. If the Company complies with this Condition 11g, it shall have no further liability to the Customer for a breach of the warranty in Condition 11b in respect of such Goods. The Company shall under no circumstances be liable for any obligations to accept returned Goods or materials.
12. a. Subject to Conditions 6, 7, 8, 9 and 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in connection with this Contract or the Goods.
- b. Nothing in these Conditions excludes or limits the liability of the Company:
 - for death or personal injury caused by the Company's negligence; or
 - under section 2(3), Consumer Protection Act 1987; or
 - for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - for fraud or fraudulent misrepresentation.
- c. Subject to Conditions 8c, 11e, 11g and 12b:
 - the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - the Company shall not be liable to the Customer for loss of profit, loss of business, loss of anticipated savings, loss of product, loss of contract, loss of revenues, loss of opportunity, loss of reputation or depletion of goodwill in each case whether direct, indirect or consequential and whether or not the time of loss was foreseen or reasonably foreseeable, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

General

13. a. The Company may assign the Contract or any part of it to any person, firm or company.
- b. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
14. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
15. a. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- b. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- c. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- d. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- e. Except with regard to the Carrier's rights under the Contract, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- f. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.
- g. All communications between the parties about the Contract shall be in writing.
- h. Headings in these Conditions are for ease of reference only and do not affect the interpretation of these Conditions.