

# **HYLEC-APL LIMITED**

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## **TERMS AND CONDITIONS OF SALE**

Unless otherwise agreed in writing by the Seller all goods are supplied in the following terms and conditions to the exclusion of any terms and conditions stipulated by the Buyer and any previous representations, warranties or communications not expressly incorporated herein

### **1. DEFINITION**

"Seller" means Hylec-APL Limited

"Buyer" means any person, firm or company who place an order for the supply or manufacture of goods with the Seller

"Goods" means the articles, items or materials described in the order

"Order" means the order placed by the Buyer of the goods.

### **2. FORMATION OF CONTRACT**

Quotations unless previously withdrawn, shall be valid for a period not exceeding sixty days from date of tender No order shall be deemed accepted until the sellers written acknowledgement thereto has been made and subject only to the terms and conditions stated below Any stipulations or conditions in the Buyers order form which would conflict with these conditions or in any way qualify or negate the same shall be deemed to be inapplicable to the order placed with the .Seller unless expressly agreed to by the Seller in writing when acknowledging the order in question.

### **3. VARIATIONS OF CONDITIONS**

Unless otherwise agreed in writing by the Seller the goods are supplied by the Seller only on these conditions and no variation of or addition thereto (whether contained in any document emanating from the Buyer or made orally by any person acting or purporting to act on behalf of the Seller) shall have effect unless it is in writing signed by or on behalf of the Seller. Should any of these conditions conflict with any conditions stated in the Buyer's order, these conditions shall prevail.

### **4. NEW ACCOUNTS**

Credit accounts cannot be opened under the minimum amount in operation at the time of placing the order Customers wishing to open a credit account must complete the Seller's standard account application form which is subject to the Seller's acceptance

### **5. ACCEPTANCE OF ORDERS**

All orders must contain sufficient information to enable the Seller to supply and or manufacture the goods required but no order shall result in a binding contract of sale unless and until it is accepted by the Seller in writing. No liability can be accepted for incorrectly ordered goods

### **6. FACSIMILE/E-MAIL ORDERS**

Such orders will be deemed to be binding contracts subject to purchase to the Seller's standard terms and conditions

### **7. PRICE VARIATIONS**

The Seller shall be entitled to adjust the selling price of the goods whether before or after the making of the agreement in which these conditions relate in the event of any variation in the cost to the Seller of supplying the goods or any part thereof, caused by any reason whatsoever beyond the control of the Seller including (without prejudice to the generality of the foregoing) changes in exchange rates or the action of any government or authority. Any increase in delivery charges imposed by the Seller after the date of confirmation of order shall be for the account of the Buyer The minimum charge in operation at the time of placing the order must be accepted

### **8. PASSING OF PROPERTY**

The property in the goods shall, notwithstanding delivery to the Buyer, remain in the Seller until the Buyer has paid the full price as well as all other sums whatsoever, due to the Seller. If at any time payment of the price or any other sums due to the Seller is overdue, the Seller may by its servants or agents enter upon the Buyer's premises and recover and dispose of the goods and the Buyer shall make no claim against the Seller in respect of such entry or disposal.

### **9. PASSING OF RISK**

The risk in goods supplied overland shall pass to the Buyer on delivery to the Buyer's designated premises or to the carrier nominated by him (whichever shall first occur) The risk in goods supplied by sea or air transport shall pass to the Buyer on delivery to the carrier nominated by the Buyer in which case the Seller will at the Buyer's written request, cost and risk, arrange for the Buyer's express instructions as to transit and packaging for sea or air transport to be carried out

### **10. DELIVERY BY INSTALLMENTS**

If any order for goods to be delivered by several installments to the Buyer each such installment shall be treated as a separate and identifiable contract and the rights of either party thereunder shall be construed accordingly, save only that the Seller may suspend delivery thereof whilst payment is overdue in respect of any previous installment. If the Seller shall fail to make delivery or shall make defective delivery of any installment such failure or defective delivery shall not affect the obligations of the parties under the contract of which these conditions form part in respect of the other installments

### **11. CARRIAGE AND PACKING**

In all mainland areas of England, Scotland and Wales via the Seller's nominated carrier, carriage & packing is not included in the cost unless otherwise specified in writing. Express or Special Delivery at the Buyer's request will always be at the Buyer's expense. Prices do not include VAT which is chargeable on transport and post. For export all packing and delivery charges on goods will be charged at cost and by method designated by the Seller.

### **12. NON-DELIVERY/LOSS/DAMAGE/DEFECT**

The seller shall be notified in writing of the non-receipt of any goods by the Buyer or his nominated carrier within fourteen days of the invoice date, failing which the Seller shall be under no liability whatsoever to the Buyer, who shall nevertheless hold the Seller indemnified against any loss arising or damage suffered through the failure to inform the carriers or the insurer's within the required time limits. The Buyer must notify the Seller of any alleged quantity shortfall, defect in, or damage to the goods within fourteen days of actual receipt and thereafter shall be deemed to have accepted the goods in all respects. Any such notice must specify the particular defect and must afford the Seller reasonable opportunity to inspect the goods in question. If the goods are agreed by the Seller to be defective or faulty the seller will (at its option) either rectify the defect or fault or replace any such goods or credit the invoice value of the goods and such rectification or replacement or credit will be in full satisfaction of any claim by the Buyer.

### **13. CONSEQUENTIAL LOSS**

The Seller shall be under no liability whatsoever (including without prejudice to the generality of the foregoing any liability in tort or for consequential loss or damage of any kind) for breakage or resulting defect occurring after delivery for any defect in or failure of or unsuitability for any purpose of the goods or any part thereof whether the same be due to any act omission negligence or willful default of the Seller or its servants or agents or to faulty design, workmanship or material or any other cause whatsoever, including (without prejudice to the generality of the foregoing) any breach by the Seller, its servants or agents of any fundamental term or any fundamental breach by the Seller, its servants or agents of any term of the contract of which these conditions form part; and all other conditions, warranties or other terms whether express or implied, statutory or otherwise inconsistent with the provisions of these conditions are hereby expressly excluded.

### **14. PENALTY CLAUSES**

Penalty clauses on Buyers orders or contracts cannot be accepted unless a specific undertaking in writing is secured from the Seller covering each order or contract concerned. Such an undertaking will not be regarded as valid unless signed by a Director of the Seller.

## **15. FORCE MAJEURE**

The Seller shall do all in its power to perform the terms of any contract of which these conditions form part and in particular to meet all delivery dates but shall not be liable for any failure to observe or breach of any of the terms hereof by reasons or acts of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, Governmental action delay in delivery by the Seller's suppliers or any other cause

## **16. RETURNS**

Goods supplied correctly to the order of the Buyer can be returned only if the Seller's permission is first obtained. Permission will only be considered if the goods are those which the Seller regularly carries in stock. All returns are subject to a handling charge.

## **17. QUANTITIES**

The price quoted is for stipulated quantities only and must not be taken to apply to any order for any lesser quantities. All quotations for goods to be delivered from stock are subject to these goods being unsold on receipt of order

## **18. COLOUR**

Colour shall be subject to reasonable variation

## **19. SAMPLES**

Any samples or shade cards supplied to the Buyer shall be accepted by the Buyer as supplied solely for information and as in no way importing any express or implied conditions or warranties as to quality, description, colour, fitness or merchantable quality of goods subsequently delivered and the Buyer shall be deemed to have satisfied himself as to such matters prior to ordering the goods

## **20. RECOMMENDATIONS**

Whilst all written recommendations including catalogues and advertising matter, made by the Seller as to the performance of the goods are made in good faith and in the belief that they are correct the Seller shall have no responsibility whatsoever for any damage liability cost claim or expense suffered by the Buyer or any third party through following such recommendations

## **21. SPECIFICATION ALTERATIONS**

The Seller reserves the right to alter the specification of any goods without prior reference to the Buyer provided that the goods comply in all other known respects with the Buyer's requirements

## **22. TRADE-MARKS/PATENTS**

The supply of goods by the Seller shall not confer any right upon the Buyer to use any Seller's trade-mark without prior written consent of the Seller and at all times such trademark shall remain the property of the Seller. Neither does it imply any right to use any Seller's patent any indemnity against infringement of third party patents

## **23. DELIVERY**

Any stipulated time for delivery shall date from receipt by the Seller of the Buyer's written order to proceed or of all the necessary information, drawings and inserts to enable the Seller to put the work in hand, whichever be the later. Delivery dates or periods are given in good faith and the Seller will make every effort to meet them but no liability is accepted for failure to deliver on a specified date or within a specified period.

## **24. DIMENSIONS**

All components supplied by the Seller shall conform as nearly as possible to the dimensions stipulated by the Buyer but deviation therefrom not adversely affecting the products to any material extent shall not affect the contract or entitle the Buyer to cancel the same. Any variation in limits to be subject to special arrangement and agreement in writing prior to acceptance of order. Standard catalogue parts are supplied against the Seller's catalogue specification and not against any drawing specification supplied by the Buyer.

## **25. INDEMNITY**

The Buyer shall indemnify the Seller against all claims in respect of any loss, injury or damage sustained by a third party, however caused, after receipt of the goods by the Buyer and shall also pay and indemnify the Seller against all royalties or other payments in respect of any patents registered designs or other rights which may be claimed as a result of goods being made according to designs or specifications supplied by the Buyer and shall indemnify the Seller against all claims expenses and costs in connection with any infringement or alleged infringement of any patent registered design or other right in the manufacture of such goods

## **26. LIABILITY**

- (a) The Seller will use his best endeavors to obtain for the Buyer the benefit of any warranty in respect of the goods (including any undertakings to repair or replace defective parts) which the Seller receives from his own suppliers in relation thereto.
- (b) The Seller's liability in terms of these conditions is in lieu and to the exclusion of all other warranties conditions or obligations imposed or implied by statute or otherwise in relation to the quality or description of the goods or their fitness for any particular purpose.
- (c) All liability for consequential or indirect loss or damage howsoever arising is hereby expressly excluded

## **27. ASSIGNMENT**

The Buyer shall not, without the Seller's prior written consent, assign or transfer or purport to assign or transfer the contract to which these conditions relate or the benefit thereof to any other person whomsoever

## **28. INDULGENCE**

No indulgence or forbearance extended to the Buyer shall limit or prejudice any right or claim assailable to the Seller

## **29. PAYMENT**

- a) The Buyer shall pay the amount invoiced in accordance with the Seller's payment terms. Nett monthly accounts are payable by the end of the month following month of invoice unless otherwise agreed in writing.
- b) If the Buyer fails to make payment by the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - (i) Suspend any further deliveries to the Buyer until payment in full is made
  - (ii) Appropriate any payments made by the Buyer to such of goods (or the goods supplied under any other contract between the Buyer and the Seller) as the seller may see fit (notwithstanding any purported appropriation by the Buyer), and
  - (iii) Charge the Buyer interest (both before and after any Judgement) on the amount unpaid at the rate of four percent (4%) per annum above the Barclays Bank Plc base rate from time to time until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest.)

## **30. CANCELLATION**

- (a) If the Buyer shall fail to make any payment when it becomes due or shall enter into any composition or arrangement with its creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if not being an incorporated company shall have a receiving order made against it or if there shall be any breach by the Buyer of any of the terms and conditions hereof, the Seller may defer or cancel any further deliveries and treat the control of which these conditions form part as determined but without prejudice to its right to any unpaid purchase price of goods delivered and to damages for any loss suffered in consequence thereof.
- (b) Orders are not subject to cancellation, change, reduction in amount or suspension of deliveries except with Seller's consent and upon terms which protect the Seller from loss.

## **31. CERTIFICATES OF CONFORMITY**

Certificates of Conformity can be issued on request at a cost stipulated by the Seller at the time of order.

## **32. ARBITRATION**

If at any time any question, dispute or difference whatsoever shall arise between the Buyer and the Seller upon or in relation to or in connection with the contract, either party shall give to the other notice in writing of such question whatsoever beyond its control, the time for delivery shall be extended until such cause shall have ceased to operate.