

BS EATON LIMITED: TERMS AND CONDITIONS OF SALE (THE "TERMS")

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms, the following words and phrases have the following meaning:
- "Company" means B S Eaton Limited, a company registered in England and Wales under registered number 653789 and whose registered office is at Coppice Lane, Cheslyn Hay, nr Walsall, Staffs, WS6 7EY;
- "Contract" means any contract between the Company and the Customer for the sale and purchase of the Goods and incorporates these Terms;
- "Customer" means the person, firm or company who purchases the Goods from the Company;
- "Delivery Place" means the place where Delivery of the Goods is to take place under term 3;
- "Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);
- "Working Day" means any day except Sundays and bank and public holidays.
- 1.2 Headings are included in these Terms for ease of reference only and shall not affect the interpretation or construction of these Terms and in these Terms, (unless the context requires otherwise): the singular includes the plural and vice versa; a reference to one gender includes all genders; references to a 'person' shall include any legal or natural person recognised in law; and the words "including" or "in particular" shall not limit the generality of any preceding words.

2. FORMATION OF CONTRACT

- 2.1 Subject to terms 7.4.3 and 8.1, the Contract shall be on these Terms, to the exclusion of all other terms and conditions and all oral or written representations (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document), whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase the Goods subject to these Terms. The Contract is formed only when the order is accepted by the Company in writing or (if earlier) the Company delivers the Goods to the Customer.
- 2.3 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.4 The quantity and description of the Goods shall be as set out in the Company's quotation or acceptance of order and any samples, specifications and advertising issued by the Company (including the Company's catalogues, brochures or website) shall not form part of the Contract.

3. PRICE AND PAYMENT

- 3.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 3.2 The price for the Goods shall be inclusive of the Company's basic delivery service (as may be amended by the Company from time to time at its complete discretion) and exclusive of any value added tax or any other taxes. Any additional costs or charges outside of the Company's basic delivery charge, such as charges for part-loads or for crane hire, shall be notified by the Company to the Customer and shall be paid by the Customer when it is due to pay for the Goods.
- 3.3 Payment of the price for the Goods is due in cleared funds in pounds sterling within the timeframe specified on the Company's invoice to the Customer or upon termination of the Contract (whichever occurs first) and time for payment shall be of the essence.
- 3.4 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.
- 3.5 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, the Goods shall be delivered to the Customer's premises, and delivery shall be effective once the signature of the Customer, its agent, employee, or sub-contractor has been scanned into the Sellers electronic proof of delivery system. Such signature shall be conclusive evidence of delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.2 The Company will use reasonable endeavours to deliver the Goods within any agreed timeframe, but any dates or times specified by the Company for delivery of the Goods are intended to be estimates and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 If for any reason the Customer fails to accept the Goods when the Company has attempted to deliver them at the Delivery Place, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 4.3.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 4.3.2 the Goods shall be deemed to have been delivered; and
- 4.3.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.4 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, 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.
- 4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.6 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.

5. RISK AND TITLE

- 5.1 Risk in the Goods will pass to the Customer from the time of delivery.
- 5.2 Ownership of the Goods shall 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.
- 5.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 5.3.2 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; 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.
- 5.4 The Customer's right to possession of the Goods shall terminate immediately if the Customer:
- 5.4.1 is in material breach of the Contract (and for the avoidance of doubt failure to pay the sums due in accordance with term 3.3 shall be a material breach);
- 5.4.2 being an individual, has a bankruptcy order made against him or makes an arrangement or compositions with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
- 5.4.3 being a body corporate, becomes insolvent according to the law, or has made any arrangements with its creditors or under the law with a view to avoiding an impending insolvency, or has had

any person appointed by its creditors or under law as a consequence of debts which have fallen, or which are about to fall, due and which the relevant party is unable to properly repay; ceases to trade; or encumbers or in any way charges any of the Goods.

5.4.4 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.

5.4.5 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this term 5 shall remain in effect.

6. QUALITY

- 6.1 The Company warrants that (subject to the other provisions of these Terms) on delivery the Goods shall:
- 6.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 6.1.2 be reasonably fit for purpose in commercial and residential developments or in highways applications; and
- 6.2 The Company shall not be liable for a breach of any of the warranties in term 6.1 unless:
- 6.2.1 the Customer gives written notice of the defect to the Company within 5 days of the time when the Customer discovers or ought to have discovered the defect; and
- 6.2.2 the Company is given a reasonable opportunity after receiving the notice to examine such Goods.
- 6.3 The Company shall not be liable for a breach of any of the warranties in term 6.1 if:
- 6.3.1 the Customer makes any further use of such Goods after giving such notice; or
- 6.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 6.3.3 the Customer alters or repairs such Goods without the written consent of the Company.
- 6.4 Subject to terms 6.2 and 6.3, if any of the Goods do not conform with the warranties in term 6.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.

7. LIMITATION OF LIABILITY

- 7.1 Subject to terms 4 and 6, the following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 7.1.1 any breach of these Terms;
- 7.1.2 any use made or resale by the Customer of any of the Goods; and
- 7.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 7.2 Subject to terms 7.3 and 7.4:
- 7.2.1 the Company's total liability in contract, tort (including negligence), 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
- 7.2.2 the Company shall have no liability to the Customer for any loss of profit, loss of business, or damage to goodwill (in each case whether direct, indirect or consequential), or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
- 7.2.3 the Company shall not be liable for any loss (whether direct, indirect or consequential) caused directly or indirectly by any delay in the delivery of the Goods and any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 7.3 The Company excludes, to the fullest extent permitted by law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 7.4 Nothing in these Terms excludes or limits the liability of the Company:
- 7.4.1 for death or personal injury caused by the Company's negligence; or
- 7.4.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 7.4.3 for fraud or fraudulent misrepresentation.

8. GENERAL

- 8.1 Any notices to be given by a party under a Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to the other party's registered office or such other address as shall be notified by that party to the other from time to time.
- 8.2 Communications shall be deemed to have been received: if sent by pre-paid first class post, two Working Days after posting (exclusive of the day of posting); or if delivered by hand, on the day of delivery; or if sent by fax on a Working Day prior to 4.00pm, at the time of transmission and otherwise on the next Working Day.
- 8.3 Save as set out in the Contract, these Terms may only be varied or amended in writing and signed by the Company.
- 8.4 The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 8.5 The Contract contains all the terms which the Company and the Customer have agreed in relation to the Goods and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 8.6 The Company will not be liable to the Customer for any failure or delay, or for the consequences of any failure or delay in the performance of the Contract if it is 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 and the Company shall be entitled to a reasonable extension of time for performing such obligations.
- 8.7 If any provision of the Contract is held to be illegal or unenforceable to any extent, then that provision will be deemed not to form part of the Contract to that extent and the remainder of the Contract will be unaffected.
- 8.8 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 and 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.
- 8.9 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.
- 8.10 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.