

BATTEN AND ALLEN LTD: STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Application of Conditions

The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2. Interpretation

2.1 In these Conditions:-

- "Business Day" means any day other than a Saturday, Sunday or bank holiday; and
- "the Buyer" means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
- "the Contract" means the contract for the purchase and sale of the Goods under these conditions;
- "these Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
- "the Delivery Date" means the date on which the Goods are to be delivered as stipulated in the Buyer's order and accepted by the Seller;
- "the Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
- "month" means a calendar month;
- "the Seller" means Batten and Allen Ltd, a company registered in England under No. 01075810;
- "writing" means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

3. Basis of Sale

3.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3.3 Sales literature and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. An order placed by the Buyer may not be withdrawn cancelled or altered prior to acceptance by the Seller and no contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the goods or has accepted an order placed by the Buyer by whichever is the earlier of:-

- (a) the Seller's written acceptance;
- (b) delivery of the Goods; or
- (c) the Seller's invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3.5 Cross border transactions are subject to Incoterms 2000.

4. Orders and Specifications

4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

4.2 The specification for the Goods shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller). The Goods will only be supplied in the minimum units (or multiples) stated in the Seller's documentation. Orders received for quantities other than these will be adjusted accordingly. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.

4.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

4.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

5. Price of Goods

5.1 The price of the Goods shall be the price agreed in writing by the Seller and the Buyer.

5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5.3 Except as otherwise stated in the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are inclusive of the Seller's charges for packaging and transport to the location in the United Kingdom specified in the Buyer's order.

5.4 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

5.5 The cost of returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned at the Buyer's expense undamaged to the Seller.

6. Terms of Payment

6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

6.2 The Buyer shall pay the price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction credit or set off) within 30 days of the date of the Seller's invoice or otherwise in accordance with such credit term as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time of the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3 All payments shall be made to the Seller in Pounds Sterling, or in a currency agreed between the Buyer and the Seller, at its office as indicated on the form of acceptance or invoice issued by the Seller.

6.4 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller; if at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding Clause 6.2 of these conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

7. Delivery

7.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place specified in the Buyer's order and/or the Seller's acceptance as the location to which the Goods are to be delivered by the Seller or, if no place of delivery is so specified, by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.

7.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.

7.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10% per cent more or 10% per cent less than the quantity ordered without any adjustment in the price per 1000, and the quantity so delivered shall be deemed to be the quantity ordered.

7.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not affect the delivery of any other instalments.

7.5 If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Seller shall be entitled upon given written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provision of Clause 8.1 of these Conditions risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.

8. Risk and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at:-

- (a) in the case of Goods to be delivered at the Seller's premises, the time when the Seller notifies the Buyer that the Goods are available for collection; or
- (b) in the case of Goods to be delivered elsewhere than at the Seller's premises, the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding the delivery of risk in the Goods, or any other goods, under these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer:-

- (a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property;
- (b) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protected and insured; and
- (c) provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and possess the Goods.

8.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Seller's Default

9.1 If the Seller fails to deliver the Goods or any of them on the Delivery Date other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault:-

- (a) if the Seller delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery;
- (b) if the Buyer gives written notice to the Seller within ten business days after the Delivery Date and the Seller fails to deliver the Goods within four business days after receiving such notice the Buyer may cancel the order and the Seller's liability shall be limited to the excess of the price of the Goods over the cheapest available market of similar goods to those not delivered over the price of the Goods not delivered.

9.2 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in delivery or in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

- (a) act of God, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes; and/or
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).

10. Warranty against Defects

10.1 The Company warrants that at the time when they leave the premises of the Company all goods correspond with their specification and are free from defect in material and workmanship (within the agreed specification(s)) provided that the Company's liability under this warranty shall be limited to either, at the Company's discretion, replacement of goods free of cost to the Buyer or credit by the Company to the Buyer of an amount not exceeding the original purchase price of the goods in respect of which notice of the defect is given to the Company within twelve months of the date of invoice and which are returned to the Company carriage paid within seven days of the Buyer first becoming aware of the defects.

10.2 The warranty contained in condition 10.1 above is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than relating to title to the goods.

10.3 The warranty contained in condition 10.1 above does not apply to and the Company accepts no responsibility for defects in goods which have been tested in accordance with the Buyer's express contractual requirements and have satisfied such tests.

10.4 Unless otherwise expressly agreed by the Company the warranty contained in condition 10.1 does not apply to and the Company accepts no responsibility for:-

- 10.4.1 Damage occurring in transit
- 10.4.2 The warranty shall neither apply to any defect which results in Batten and Allen's opinion from normal wear and tear, nor to any defect wholly or partially caused by an alteration or addition to the Goods other than by Batten and Allen, or by use or storage of the Goods in a manner reasonably considered by Batten and Allen to be improper, or for purposes for which the Goods were not designed, or by accident, neglect or events beyond Batten and Allen's control occurring after physical delivery of the Goods to Buyer or its agents or carrier or,

10.4.3 consumable items.

10.5 The Buyer shall not rely upon any representation concerning any goods supplied unless the same shall have been made by a person authorised by the Company in writing.

10.6 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

10.7 The Buyer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority and the Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.

11. Buyer's Default

11.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

- (a) cancel the order or suspend any further deliveries to the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

11.2 This condition applies if:-

- (a) the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
- (b) the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- (c) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (d) the Buyer ceases, or threatens to cease, to carry on business; or
- (e) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.3 If Condition 11.2 applies then, whether or not the Seller has the right to remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. Confidentiality, Publications and Endorsements

12.1 The Buyer undertakes to the Seller that:-

- (a) the Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default;
- (b) the Buyer will not use or authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises note paper visiting cards advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its Licensor;
- (c) the Buyer will use all reasonable endeavours to ensure compliance with this Condition by its employees, servants and agents.

This Condition shall survive the termination of the Contract.

13. General

13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.4 The Contract shall be governed by the laws of England.