

**TERMS AND CONDITIONS OF SALE**

**1. Definitions:**

In these Conditions of Sale the following meanings shall apply:

“the Supplier”	means	CIUR (UK) Limited.
“the Customer”	means	the person seeking to purchase Goods from CIUR (UK) Ltd.
“the Goods”	means	the goods or where the context permits the services to be supplied by ‘The Supplier’.
“the Defect”	means	the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled ‘The Customer’ to damages.
“the Terms”	means	the terms set out in this document and any special terms agreed in writing between ‘The Customer’ and ‘The Supplier’.
“the Contract”	means	the contract for the supply of ‘the Goods’ incorporating these terms.

**2. The Contract:**

- 2.1 All orders are accepted by ‘the Supplier’ only under these Terms and they may not be altered other than with our written agreement. Any contrary or additional terms unless so agreed are excluded.
- 2.2 Quotations are invitations to treat only and shall lapse 30 days from their date.
- 2.3 Orders may be cancelled only with ‘the Suppliers’ written agreement and ‘the Customer’ will indemnify ‘the Supplier’ against all costs claims losses or expenses incurred as a result of that cancellation.
- 2.4 ‘The Customer’ shall be responsible to ‘the Supplier’ for ensuring the accuracy and sufficiency of the terms of any order including any applicable design drawing or specification provided by ‘the Customer’ to ‘the Supplier’ and for giving ‘the Supplier’ any necessary information relating to the Goods within a sufficient time to enable ‘the Supplier’ to perform the Contract in accordance with its Terms.
- 2.5 ‘The Supplier’ shall have no responsibility to ‘the Customer’ for the design structural integrity or erection of any building or structure or any element of such building or structure in which the Goods are to be incorporated.
- 2.6 ‘The Supplier’ shall not be liable in respect of any misrepresentation made by ‘the Supplier’ our servants or agents to ‘the Customer’ your servants or agents as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:
- 2.6.1 Made or confirmed in writing by ‘the Supplier’; and/or
- 2.6.2 Fraudulent.
- 2.6.3 Without prejudice to Clause 2.6.1 of these Terms while ‘the Supplier’ will take every precaution in the preparation of our catalogues technical circulars price lists and other literature these documents are for ‘the Customers’ general guidance only and statements made therein (in the absence of fraud on our part) shall not constitute representations by ‘the Supplier’ and ‘the Supplier’ shall not be bound by them.
- 2.7 For the avoidance of doubt ‘the Suppliers’ liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 8 of these Terms.

**3. Price:**

- 3.1 The price of the Goods shall be as agreed between 'the Customer' and 'the Supplier' as at the date of 'the Supplier's' acceptance of 'the Customers' order. The price is exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice.
- 3.2 'The Suppliers' quotations are based on prices applicable to the quantity specified. In the event of orders being placed for lesser quantities 'the Supplier' shall be entitled to adjust the price of the Goods as ordered to take account of the variation in quantity.

**4. Payment:**

- 4.1 Unless the sale is for cash or other credit terms that have been agreed in writing between 'the Customer' and 'the Supplier' all accounts are due for payment 30 days from the date of our invoice.
- 4.2 'The Supplier' reserves the right to refuse to execute any order or contract if the arrangements for payment or 'The Customers' credit are not satisfactory to 'the Supplier' and in 'the Suppliers' sole discretion 'the Supplier' may require payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until 'the Supplier' is in receipt of cleared funds.
- 4.3 In the case of short delivery the Customer will remain liable to pay the full invoice price of all Goods delivered or available for delivery.
- 4.4 'The Customer' may not withhold payment of any invoice or other amount due to 'the Supplier' by reason of any right of set off or counterclaim which 'the Customer' may have or allege to have for any reason whatever.

**5. Delivery:**

- 5.1 Where 'the Customer' or 'the Customers' haulier collects 'the Goods' from 'the Supplier' or from 'the Suppliers' suppliers delivery will be effected and risk in the Goods shall pass to 'the Customer' when 'the Goods' are loaded onto 'the Customer' or 'the Customers' hauliers transport.
- 5.2 Where 'the Supplier' or 'the Suppliers' supplier delivers 'the Goods' to 'the Customers' nominated delivery address delivery will be effected and risk in the Goods shall pass to 'the Customer' when the Goods are unloaded from 'the Suppliers' or 'the Suppliers' supplier's transport. 'The Supplier' shall not be liable for any damage or deterioration of Goods sold on delivered terms after the Goods have been offloaded from 'the Suppliers' transport.
- 5.3 Delivery dates are given in good faith but are estimates only.
- 5.4 Time for delivery shall not be of the essence of the Contract.
- 5.5 For the avoidance of doubt and without derogation from any other provisions of these terms 'the Supplier' shall not be liable for any damages whatsoever whether direct or consequential (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of 'the Goods' or failure to deliver 'the Goods' in a reasonable time whether such delay or failure is caused by our negligence or otherwise howsoever.
- 5.6 'The Supplier' reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment. 'The Suppliers' failure to deliver any one or more instalments or any claim by 'the Customer' in respect of any one or more instalments shall not entitled 'the Customer' to treat 'the Contract' as a whole as repudiated.
- 5.7 Unless otherwise stated all quotations and estimates assume delivery in one consignment. 'The Supplier' reserves the right to levy additional charges for deliveries by instalments where requested by 'the Customer'.

- 5.8 If the price agreed includes the cost of delivery then delivery will be made on weekdays during normal working hours. An additional charge may be made if 'the Supplier' agrees to your request to deliver at a specific time, outside normal working hours or on Saturdays, Sundays and/or Bank Holidays.
- 5.9 'The Customer' will provide to 'the Supplier' free of charge the necessary labour and plant for unloading the Goods. The labour 'the Customer' provides shall be competent in the operation of any plant provided by 'the Customer' and (where appropriate) the safe slinging of loads. 'The Customer' will unconditionally fully and effectively indemnify 'the Supplier' and 'the Suppliers' employees, agents and subcontractors against all loss damages costs on an indemnity basis and expenses awarded against or incurred by 'the Supplier' in connection with or paid or agreed to be paid by 'the Supplier' arising from 'the Customers' provision of such labour and plant.
- 5.10 Unloading is to be completed with reasonable speed. If "the Suppliers' delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if "the Supplier' provides additional labour and/ or plant to unload 'the Goods' or if for any reason "he Customer' fails to accept delivery of 'the Goods' an additional charge will be made.
- 5.11 'The Supplier' shall deliver 'the Goods' as near as possible to the delivery address as a safe hard road permits. 'The Supplier' reserves the right to refuse to deliver 'the Goods' to premises considered in the discretion of the driver to be unsuitable.
- 5.12 If 'the Goods' are to be deposited other than on 'the Customers' private premises 'the Customer' shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and will indemnify 'the Supplier' in respect of all costs claims losses or expenses 'the Supplier' may incur as a result of such delivery whether on the public highway or elsewhere.

## **6. Inspection:**

- 6.1 Where 'the Customer' or 'the Customers' haulier collect 'the Goods' from 'the Supplier' 'the Customer' shall inspect the Goods at the place and time of loading. Where 'the Supplier' or 'the Suppliers' supplier deliver the Goods to 'the Customer' at 'the Customers' nominated delivery address 'the Customer' shall inspect the Goods at the place and time of unloading.
- 6.2 Short Delivery:
- 6.2.1 'The Customer' must give 'the Supplier' written notice within 3 working days of loading or unloading of any claim for short delivery.
- 6.2.2 If 'the Customer' does not give 'the Supplier' that notice within that time 'the Goods' will be deemed to have been delivered in the quantities shown in the delivery documents.
- 6.2.3 'The Customer' shall not be entitled and irrevocably and unconditionally waive any right to reject 'the Goods' or claim any damages whatsoever for short delivery howsoever caused.
- 6.2.4 'The Suppliers' liability for short delivery is limited to making good the shortage.
- 6.3 Non-conforming Goods
- 6.3.1 Where it is or would have been apparent on a reasonable inspection that 'the Goods' are not in conformity with the Contract 'the Customer' must give 'the Supplier' written notice within 3 working days.
- 6.3.2 If 'the Customer' fails to give 'the Supplier' that notice within that time 'the Goods' will be deemed to have been accepted and 'the Customer' shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods

6.3.3 If 'the Customer' fails to give 'the Supplier' that notice within that time Clause 9.5 shall have effect.

## **7. Countermands and Returns:**

- 7.1 'The Supplier' reserves the right not to accept the return of any or all of 'the Goods' ordered by 'the Customer'.
- 7.2 Where 'the Supplier' agrees to accept the return of 'the Goods' 'the Supplier' will make a handling charge of 25% of the invoiced price of 'the Goods' (exclusive of VAT).
- 7.3 If 'the Customer' wishes to return 'the Goods' to the 'Supplier' 'the Customer' must obtain a goods return authorisation from 'the Supplier' before returning 'the Goods' to 'the Suppliers' premises. 'The Supplier' shall be under no obligation to accept any return from 'the Customer' in the absence of such authorisation.
- 7.4 'The Customer' shall pay for the cost of returning 'the Goods' to 'the Supplier' and the risk in 'the Goods' being returned by 'the Customer' to 'the Supplier' shall remain with 'the Customer' until 'the Goods' are returned to 'the Supplier' in safe and good condition.
- 7.5 'The Goods' will be deemed to have been returned to 'the Supplier' upon issue of a signed goods return note by 'the Supplier' to 'the Customer' at the time of return. 'The Supplier' will have no liability or obligation to 'the Customer' regarding claims for refund or credit in respect of returned Goods unless You are able to quote the relevant goods return note number and present a copy of such return note to 'the Supplier' on demand.

## **8. Title and Risk**

- 8.1 Risk in the Goods shall pass to 'the Customer' when 'the Goods' are delivered.
- 8.2 The title and property in the Goods shall remain with 'the Supplier' until 'the Customer' pay all sums due to 'the Supplier' whether in respect of this Contract or otherwise
- 8.3 'The Supplier' shall at all times at our absolute discretion be entitled to appropriate any payment made by 'the Customer' to 'the Supplier' to settle any invoices or accounts in respect of 'the Goods' supplied by 'the Supplier' to 'the Customer' notwithstanding any purported appropriation to the contrary by 'the Customer'
- 8.4 Until title passes:-
- 8.4.1 'The Goods' shall be stored separately from any other goods and 'the Customer' shall not interfere with any identification marks labels batch numbers or serial numbers on 'the Goods'.
- 8.4.2 'The Customer' is licensed by 'the Supplier' to use, agree to sell and sell 'the Goods' supplied by 'the Supplier' in the ordinary course of 'the Customers' business subject to the express condition that 'the Supplier' retains the right to revoke such licence upon service of written notice to 'the Customer' at any time prior to full payment by 'the Customer' of all sums owing to 'the Supplier' on any grounds whatsoever should 'the Supplier' have reasonable doubt as to 'the Customers' solvency.
- 8.5 'The Supplier' shall be entitled to recover the price of 'the Goods' including VAT even though the property in any of 'the Goods' remains with 'the Supplier'.
- 8.6 'The Supplier' shall be entitled at any time to recover any or all of 'the Goods' in 'the Customers' possession to which 'the Supplier' have title and for that purpose 'the Suppliers' servants or agents may with such transport as is necessary enter upon any premises occupied by 'the Customer' or to which 'the Customer' may have access and where 'the Goods' may be or are believed to be situated. Where 'the Goods' to which 'the Supplier' have title are incorporated into other goods or products but remain severable 'the Supplier' retain' the right to sever and remove 'the Goods' over which 'the Supplier' claim title from other goods or products.

## 9. Liabilities

- 9.1 Nothing in these Terms shall exclude or restrict 'the Suppliers' liability for death or personal injury resulting from 'the Suppliers' negligence or our liability for fraudulent misrepresentation.
- 9.2 Subject to Clause 9.1 of these Terms 'the Supplier' shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability in damages 'the Supplier' undertake liability under Clause 9.3 below.
- 9.3 Where but for the effect of Clause 9.2 of these Terms 'the Customer' would have been entitled to damages against 'the Supplier', the Supplier shall not be liable to pay damages but subject to the conditions set out in Clause 9.4 below shall in 'the Suppliers' sole discretion either repair 'the Goods' at 'the Suppliers' own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- 9.4 'The Supplier' will not be liable under Clause 9.3:
- 9.4.1 if the Defect arises from fair wear and tear
- 9.4.2 if the Defect arises from wilful damage negligence abnormal working conditions mis-use alteration or repair of 'the Goods' failure to follow British Standard or industry instructions relevant to 'the Goods' or storage of 'the Goods' in unsuitable conditions (but this sub-clause shall not apply to any act or omission on 'the Suppliers' part)
- 9.4.3 unless after discovery of the Defect 'the Supplier' is given a reasonable opportunity to inspect 'the Goods' before they are used or in any way interfered with.
- 9.5 Subject to Clause 9.1 of these Terms 'the Supplier' shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever (if notwithstanding Clause 9.2 of these Terms the Customer is entitled to recover any) nor shall 'the Supplier' be liable under Clause 9.3 of these Terms unless:-
- 9.5.1 if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms notice of any claim is given to 'the Supplier' within 3 working days ; or in any other case
- 9.5.2 the Defect is discovered within 1 months from the date of delivery and 'the Supplier' is given written notice of the Defect within 3 working days of it being discovered.
- 9.6 If the Goods are not manufactured by 'the Supplier' or have been processed or milled by a third party whether or not at our or 'the Customers' request 'the Suppliers' liability in respect of any defect in workmanship or materials of 'the Goods' will be limited to such rights against the manufacturer or the third party as 'the Supplier' may have in respect of those Goods. 'The Supplier' will on written request provide details of 'the Suppliers' rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible will on request assign to 'the Customer' any such rights.
- 9.7 Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on 'the Suppliers' part (whether arising from 'the Suppliers' negligence or otherwise) shall not exceed the purchase price of the Goods that are the subject matter of any claim.
10. **Non-Payment/ Insolvency**
- 10.1 "Insolvent" means 'the Customer' becoming unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or

distress on any of your property; the appointment of a receiver or administrative receiver over all or any part of your property; a proposal for a voluntary arrangement or compromise between 'the Customer' and their creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up or for an administration order in relation to 'the Customer'; if the Customer suffers any analogous step or proceedings under foreign law or 'the Customer' ceasing or threatening to cease to carry on your business.

10.2 If 'the Customer' fails to pay the price for any Goods on the due date or 'the Customer' becomes Insolvent or if the Customer is a limited company or partnership there is a material change in your constitution or the Customer commits a material breach of this Contract and fail to remedy that breach all sums outstanding between 'the Customer' and 'the Supplier' shall become immediately payable and 'the Supplier' shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-

10.2.1 Require payment in cleared funds in advance of further deliveries

10.2.2 Cancel or suspend any further deliveries to You under any contract without liability on our part

10.2.3 Charge interest on the balance of monies outstanding at the rate of 4% above National Westminster Bank Plc base rate in force from time to time from the date the payment became due until actual payment is made after as well as before judgement.

10.2.4 Without prejudice to the generality of Clause 8 of these Terms exercise any of our rights pursuant to that clause.

## **11. General**

11.1 This Contract shall be governed and interpreted exclusively according to the Law of England.

11.2 'The Supplier' shall not be liable for any delay or failure to perform any of our obligations in relation to 'the Goods' due to any cause beyond our reasonable control including industrial action.

11.3 The waiver by 'the Supplier' of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

11.4 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and subclauses of these Terms shall not be affected and they shall remain in full force and effect.

11.5 Health and Safety information relevant to the Goods is available on request.

CIUR (UK) Limited

January 2012 Version1

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