

W. L. WEST & SONS LTD.

Standard Terms and Conditions of Sale

1. INTERPRETATION

- 1.1. In these conditions:
"Buyer" means the party who has contracted to buy the Goods.
"Seller" means the party who has contracted to sell the Goods.
"Goods" means the Goods (including any instalment thereof) which the Seller is to supply in accordance with these conditions.
"Conditions" means the standard terms and conditions of sale included in clauses 1 to 10 hereof and any agreed variations thereto confirmed in writing by the Seller to the Buyer.
"Contract" means the contract for the sale of the Goods.
"Writing" includes letter, telex, facsimile, email transmission or any similar form of communication.
"Consumer Sales" refers to any Contract where the Buyer deals as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977.
"Working days" means every day save for Saturdays, Sundays and public holidays in the jurisdiction where the Seller is resident.
- 1.2. Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4. The Seller operates a computerised system of numbering customer accounts. These are defined as ordering accounts and are used by the Seller for managing the processing of orders. Use by the Seller of such accounts does not accept or imply acceptance of the Buyer as a credit customer or assume that, that account should have credit facilities.
- 1.5. Acceptance of an order by the Seller does not accept or imply acceptance of the Buyer as a credit customer or assume that, that account should have credit facilities.
- 1.6. Application for credit facilities should be made on the Sellers "Credit Account Application Form" and should be completed in full.
- 1.7. The Seller reserves the right to deny credit facilities or to reveal any reason why credit facilities have been denied or even advise that credit facilities have been denied.
- 1.8. Buyers for whom Credit Accounts are opened, shall be notified only when references have been taken up and replies from referees have been received and only then at the discretion of the directors of the Sellers company.
- 1.9. The Sellers credit terms are strictly net 30 days.

2. CONSUMER SALES

- 2.1. In Consumer Sales any provision of these Conditions which by virtue of the Unfair Contract Terms Act 1977 would be of no effect shall not apply.
- 2.2. The statutory rights of a Buyer under Consumer Sales are not affected by the Conditions.

3. BASIS OF THE SALE

- 3.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions, subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.
- 3.2. Where the Contract stipulates the basis of sale is "to arrive" or "subject to shipment and safe arrival" it is agreed that:
 - 3.2.1. all such sales shall be subject to shipment and safe arrival so that the Seller shall be under no liability if the Goods are not shipped or do not arrive at their port or place of destination, and any variation in the total of the war risk insurance rate or any charge, tax, levy, duty or impost on the Goods shall be for the Buyers account, and
 - 3.2.2. directions for delivery are given by the Buyer to the Seller in time to enable them to be carried out upon arrival. In the absence of such instructions or if ordered by the Buyer to rail or road transport or to craft and the Buyer fails to provide such transport when the Goods are available, the Seller may take such steps as he may in his absolute discretion consider to be necessary to clear the Goods and may recover from the Buyer all expenses thereby incurred.
 - 3.2.3. No waiver of or variation to these Conditions shall be binding unless agreed in Writing by the Seller to the Buyer.
- 3.3. The Buyer warrants it will not act upon and acknowledges the Seller shall not be liable to the Buyer for any advice or recommendations and/or representations given by or on behalf of the Seller before or after the Contract was entered into unless such are confirmed by the Seller in Writing to the Buyer.
- 3.4. Any error or omission in any documents issued by the Seller shall be subject to correction without any liability on the part of the Seller.

4. ORDERS AND SPECIFICATIONS

- 4.1. No quotation issued by the Seller to the Buyer shall constitute an offer by the Seller to the Buyer and no assurance can be inferred that the Goods will be available at a later stage. No assurance can be given by the Seller that the Goods contained in a quotation by the Seller to the Buyer shall be available to and unsold for the Buyer at such time as the Buyer may offer to purchase the Goods on the basis of the quotation provided to the Buyer by the Seller. A quotation issued by the Seller to the Buyer shall be deemed to be accurate for a period not exceeding thirty days, such days to include Saturdays, Sundays and public holidays, after which time no warranties or assurances can be given by the Seller to the Buyer as to the accuracy of the quotation.
- 4.2. The Seller reserves the right to cancel its acceptance of any Contract in the circumstances where delay has arisen between the making of the Contract and payment, such that the Seller has become adversely affected by the delay.
- 4.3. No offer or order shall be deemed accepted unless confirmed in Writing by the Seller but the Seller shall be entitled to waive this Condition either expressly or by conduct.

- 4.4. The Buyer warrants the accuracy of the terms of any order submitted to and accepted by the Seller and undertakes to provide promptly to the Seller any necessary information to perform the Contract.
- 4.5. The Buyer warrants that any Goods to be manufactured or processed to their specification by or on behalf of the Seller do not infringe any patent, copyright, design, trademark or other industrial or intellectual property rights of any person and in the event of any breach of this warranty, indemnifies the Seller against all consequences of any claim howsoever made.
- 4.6. The Seller reserves the right to make changes in the specification of the Goods which do not materially affect their description and where such changes are required in consequence of amendments to safety or other statutes the additional cost thereof shall be for Buyer's account.
- 4.7. No Contract may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages charges and expenses incurred by the Seller as a result of the cancellation.
- 4.8. The Seller shall have the right to vary the quantity of any Contract item by ten percent (10%) more or by any permitted margin appearing in any Contract made by the Seller to satisfy the Contract with the Buyer.

5. THE PRICE OF GOODS

- 5.1. The price of the Goods and any variation thereto under the Contract shall be as agreed between the Buyer and the Seller.
- 5.2. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at the time of delivery to the Buyer or when notice of readiness for delivery has been given by the Seller to the Buyer.
- 5.3. The Seller reserves the right to increase the price of the Goods where such increase is due to any changes to or delay in performance of the Contract caused by such actions, defaults and requests by the Buyer or by virtue of an event beyond the Control of the Seller, save that the Buyer shall have the right (except for Goods specially manufactured to their specification) to cancel the Contract within three (3) Working Days of being notified of the increase in price which is due to such event.
- 5.4. Prices are exclusive of Value Added Tax where applicable.
- 5.5. If the Buyer fails to make any payment on the due date under the Contract or any other Contract with the Seller, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 5.5.1. cancel the Contract or suspend any outstanding deliveries to the Buyer, and
 - 5.5.2. appropriate any payment made by the Buyer as the Seller may think fit, notwithstanding any specific appropriation by the Buyer, and
 - 5.5.3. charge the Buyer in accordance with the **Late Payment of Commercial Debts Regulations 2002** this equates to Bank of England base rate plus 8%, from the date(s) that the amounts were due until the date payment in full (including interest) is made. Up to an additional £100 may be added for administration of the debt.
- 5.6. If any contract made by the Seller to procure the Goods provides for an increase in price or for the cancellation of such contract in the event of alteration in rates of exchange the Seller shall have the right correspondingly to cancel the Contract or increase the price to the Buyer.
- 5.7. No discount, whether settlement, trade or otherwise may be deducted in payment from any invoice price unless agreed in Writing by the Seller to the Buyer prior to acceptance of the Contract or unless stated on the invoice.

6. DELIVERY

- 6.1. The Seller shall notify the Buyer when the Goods are available for delivery, whether at the Seller's premises or to such place agreed under the Contract.
- 6.2. The Buyer shall promptly take delivery of the Goods on receipt of notice of readiness from the Seller and if the Buyer delays or prevents such, then the Seller shall have the right to treat such conduct as a repudiation of the Contract and on giving notice to the Buyer, treat the Contract as terminated or to determine the method of storage appropriate for the Goods and to charge the Buyer rent as appropriate at:
 - 6.2.1. the rate (if any) specified in the Contract or otherwise agreed in Writing, or
 - 6.2.2. a rate per day of zero point one percent (0.1%) of the invoice value of any Goods stored at Seller's premises together with the amount payable by the Seller per day for any Goods stored elsewhere.
- 6.3. Any additional cost arising from delay caused by the unreasonable act or default of either party in furnishing and/or loading and/or discharging rail or road transport or container to be for the account of the party causing the delay.
- 6.4. Where the Goods are to be delivered in instalments, each instalment 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 entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5. Where the Seller agrees to deliver the Goods to the Buyer, this shall be to the nearest on a road suitable in the opinion of the driver of the vehicle used. The Buyer shall provide the necessary labour and equipment to unload the vehicle and/or container without undue delay.
- 6.6. The Seller shall endeavour to comply with any dates quoted for delivery of the Goods, but shall not be liable for any delay in delivery caused by reasons beyond the Seller's control. Time for delivery shall not be of the essence under the Contract unless previously agreed by the Seller in Writing to the Buyer.
- 6.7. If the Seller fails to deliver the Goods and is liable to the Buyer hereunder in respect of such failure the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

Under no circumstances shall the *Seller* be liable to the *Buyer* for loss of profits or market or any consequential loss whatsoever.

7. RISK AND PROPERTY

- 7.1. The risk of damage to or loss of the *Goods* shall pass to the *Buyer*:
- 7.1.1. in the case of *Goods* to be delivered at the *Sellers* premises, at the time when the *Seller* notifies the *Buyer* that the *Goods* are available for collection or
- 7.1.2. in the case of *Goods* to be delivered otherwise than at the *Sellers* premises at 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*.
- 7.2. Notwithstanding delivery and the passing of risk in the *Goods* or any other provision of 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 any interest due thereon and all other *Goods* agreed to be sold by the *Seller* to the *Buyer* for which payment is then due.
- 7.3. Until such time as the property in the *Goods* passes to the *Buyer*, 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 property stored, protected and insured and identified as the *Seller's* property. Until that time 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 monies or property of the *Buyer* and third parties and in the case of tangible proceeds, properly stored, protected and insured.
- 7.4. Until such time as the property in the *Goods* passes to the *Buyer* (and 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 repossess the *Goods*.
- 7.5. 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 monies owing by the *Buyer* to the *Seller* shall (without prejudice to any other right or remedy of the *Seller*) forthwith become due and payable.
- 7.6. In the event of the *Goods* becoming the constituents or being converted into other products whilst any monies are owing to the *Seller* by the *Buyer*, the *Seller* shall have the ownership of and title to such other products as if they were the *Goods* and Clauses 7.3, 7.4 and 7.5 hereof shall apply to such products mutatis mutandis.

8. WARRANTIES AND LIABILITY

- 8.1. In no circumstances shall the *Seller* be able to give credits to the *Buyer* in respect of timbers which have been returned by the *Buyer* to the *Seller*, having been machined by the *Buyer*, except in reasonable circumstances to be defined at the sole discretion of the *Seller*. Where *Goods* are returned by the *Buyer* to the *Seller* and accepted by the *Seller*, a restocking charge of fifteen percent (15%) of the invoiced value of the returned *Goods* shall be levied and become payable by the *Buyer* to the *Seller*.
- 8.2. the *Buyer* agrees that liability shall not be incurred by the *Seller* for any loss arising to the *Buyer* as a result of failure by the *Seller* to supply to the *Buyer*, *Goods* corresponding with a specification provided by the *Buyer* to the *Seller*, save where such specification has been supported by a sufficiently detailed diagram supplied by the *Buyer* to the *Seller*.
- 8.3. *Goods* are not tested or sold as fit for any particular purpose and any term, warranty or condition expressed, implied or statutory to the contrary is excluded.
- 8.4. It is hereby declared and agreed:
- 8.4.1. that the *Buyer* is skilled and knowledgeable with regard to the *Goods*, and
- 8.4.2. that the *Buyer* does not rely on the *Seller's* skill or judgement with regard to the *Goods*, and
- 8.4.3. that the *Buyer* will inspect the *Goods* in a reasonably thorough manner at its own premises prior to use.
- 8.5. *Goods* manufactured to the design or specification of the *Buyer* or their experts, carry no undertaking of any kind except of compliance with the design or specification.
- 8.6. In no circumstances whatsoever shall the liability of the *Seller*, (in *Contract*, tort or otherwise) to the *Buyer* arising under, out of or in connection with this *Contract* or the *Goods*, exceed the invoice price of the *Goods* as the subject matter of any claim.
- 8.7. If and to the extent that any person by whom the *Seller* has been supplied with the *Goods* (in this sub-clause referred to as "the *Supplier*") validly excludes, restricts or limits the liability to the *Seller* in respect of the *Goods* or of any loss or damage arising in connection therewith, the liability of the *Seller* to the *Buyer* in respect of the *Goods* or of any loss or damage arising in connection therewith shall be correspondingly excluded, restricted or limited. If the *Supplier* validly excludes, restricts or limits his liability to the *Seller* in respect of any liability of the *Seller* to the *Buyer* in connection with the *Goods*, then the liability of the *Seller* to the *Buyer* in respect of the *Goods*, shall be excluded, restricted or limited to the extent to which the *Supplier* is liable to the *Seller* in respect of the *Seller's* liability to the *Buyer* and no further. Any term, warranty or condition expressed or implied or statutory to the contrary is (except in the case of *Consumer Sales*) excluded. The *Seller* will upon request supply the *Buyer* with details of any such exclusion, restriction or limitation.
- 8.8. All terms expressed or implied relating to the quality of the *Goods* are warranties only the breach of which gives no right to reject the *Goods* or terminate the *Contract* in any circumstances whatsoever.
- 8.9. If it is agreed that the *Goods* be processed by the *Seller*, then the *Seller* may arrange for such processing to be performed by a third party and in such case the operation shall be carried out on the standard terms and conditions of the third party but entirely at the *Buyer's* risk and no liability whatsoever is accepted by the *Seller* for any loss, deterioration or damage arising from such processing whether carried out by the *Seller* or

by third parties to whom such processing is subcontracted. The *Buyer* hereby grants to the *Seller* authority to conclude contracts with such third parties on the standard terms and conditions of such third parties. If subsequently the *Goods* are processed by the *Buyer*, the *Seller* is to have no liability for any damage or deterioration to the *Goods* or any loss arising thereout unless any such process was carried out with the prior approval in *Writing* by the *Seller*.

- 8.10. Notice of any claim arising out of or in connection with this *Contract* must be given in *Writing* to the *Seller* as soon as the *Buyer* becomes aware of the same but in any event within three (3) *Working Days* from the date when the *Goods* are collected or delivered, failing which all claims (other than claims arising out of or in connection with defects not discoverable upon full and proper examination of the *Goods*) shall be deemed to be waived and absolutely barred. In any event, any claims in respect of latent defects, shall be deemed to be waived and absolutely barred twelve (12) months after the *Goods* are collected or delivered.
- 8.11. The *Seller* shall be under no liability for shortage or damage in transit or for deviation, misdelivery delay or detention unless the *Seller* and the carrier are advised thereof in *Writing*, otherwise than upon a consignment note or delivery document, within three (3) *Working Days* and a claim is made on the *Seller* and the carrier in *Writing* within seven (7) *Working Days* after the termination of transit as defined under the current conditions of carriage of the Road Haulage Association.
- 8.12. The *Buyer* shall only be entitled to pursue claims in respect of *Goods* available for inspection by the *Seller* and in any event the *Seller* shall in respect of any claim be entitled to assume that any *Goods* not available for inspection are at the top grade for such *Goods* within the *Contract*.
- 8.13. 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 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* control.

9. INSOLVENCY OF THE BUYER

- 9.1. The provisions of Clause 9.2 apply if:
- 9.1.1. the *Buyer* makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or
- 9.1.2. an embcumbrancer takes possession or a Receiver is appointed, of any property or assets of the *Buyer* or
- 9.1.3. The *Buyer* ceases or threatens to cease to carry on business, or
- 9.1.4. 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, or
- 9.1.5. the credit insurers of the *Seller* are not prepared to offer credit insurance in respect of the *Buyer* or subsequently withdraw such cover or it becomes unavailable due to a credit limit in respect of the *Buyer* being exceeded and the *Buyer* fails within seven (7) *Working Days* notice of being so required by the *Seller* to provide reasonable sufficient security.
- 9.2. If any of the circumstances or events under Clause 9.1 arise or apply, then without prejudice to any other right or 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.

10. GENERAL

- 10.1. The *Buyer* shall not be entitled to withhold or set off payment of any amount due to the *Seller* under the terms of this *Contract*, whether in respect of any claims of the *Buyer* in respect of faulty or defective *Goods* or for any other reason which is contested, or liability for which is not admitted by the *Seller*.
- 10.2. 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 principle place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving notice.
- 10.3. If any provision of these *Conditions* is held by a 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 provisions in question shall not be affected thereby.
- 10.4. The *Contract* shall be governed by the Laws of England.
- 10.5. 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 of any other provision.
- 10.6. Any dispute and/or claim which cannot be settled amicably shall (except in the case of *Consumer Sales*) be referred to Arbitration by a sole Arbitrator if the parties can agree upon one, otherwise two Arbitrators, with one to be appointed by each party and if the Arbitrators fail to agree upon an award, they shall appoint an umpire to decide on the same. In either case the appointments and conduct of the arbitration shall be in accordance with and subject to the provisions of the relevant Arbitration Act(s) in force and applicable at the place for delivery of the *Goods*.

CLAUSE 1.9

W. L WEST & SONS LTD 'S CREDIT TERMS ARE STRICTLY NET 30 DAYS SETTLEMENT