

FISHER & WOOD (GC) LTD

TERMS & CONDITIONS

The Customer's attention is in particular drawn to the provisions of Condition 11.4.

1. Interpretation

1.1 The definitions and rules of interpretation in this Condition apply in these Conditions.

AAF: the Application for Account Facility overleaf;

Customer: the person, firm or company who purchases the Goods from the Company;

Company: Fisher & Wood (GC) Ltd.,

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods, comprising the AAF together with these Conditions;

Delivery Point: the place where delivery of the Goods is to take place under Condition 4;

Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

2. Application of Terms

2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or Conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company. 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. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order for Goods howsoever made by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions.

2.5 Subject to Condition 14.5, no order placed by the Customer shall be deemed to be accepted by the Company until the Company delivers the Goods to the Customer.

2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company has made the first delivery of Goods to the Customer. Any quotation is valid for a period of 2 days only from its date, provided that the Company has not previously withdrawn it, unless otherwise agreed.

3. Description

3.1 The quantity and description of the Goods shall be as agreed between the Company and the Customer and confirmed by the Company in the delivery note.

3.2 All samples, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. Delivery

4.1 Unless otherwise agreed by the Company, delivery of the Goods shall take place at the premises specified for delivery by the Customer in the AAF.

4.2 The Customer shall take delivery of the Goods on the day of delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate 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.

4.4 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by: (a) any delay in the delivery of the Goods (even if caused by the Company's negligence). In such circumstances of delay the Customer shall not be entitled to terminate or rescind the Contract unless such delay exceeds 180 days; or (b) the delivery of the Goods to the Customer's premises by the Company.

4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered;

(c) 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).

4.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment for unloading and loading the Goods

4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and

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paid for in accordance with the provisions of the Contract.

5. Non-delivery

5.1 The quantity of any consignment of Goods as ordered (whether verbally or otherwise) by the Customer and as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the fact of delivery and of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 24 hours of the date when the Goods would in the ordinary course of events have been received.

5.3 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.

6. Risk/Title

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 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:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) 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;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) store and maintain the Goods in satisfactory conditions given the nature of the Goods and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and

(b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately upon the occurrence of any event detailed in Conditions 14.2 (b-e) inclusive and Condition 14.2 (g).

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 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.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

7. Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's standard price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax, insurance or delivery charges which may apply, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods. The Company reserves the right to charge a delivery charge to the Customer for any low value orders or for speciality orders which are listed on the Company's product list.

8. Payment

8.1 Subject to Condition 8.4, unless otherwise agreed in writing, payment of the price for the Goods (and any delivery charge) is due in pounds sterling within 28 days of the date on the invoice or if the Company has given written authorisation to the Customer to pay on a monthly basis, no later than the 15th day of the month immediately following the month of the invoice.

8.2 Unless otherwise agreed invoices will be issued on a weekly basis and will be sent to the Customer's address as set out in the AAF. Any disputed invoice must be notified to the Company in writing within 7 days of the date of the invoice after which time the invoice will be deemed to be correct. The Company will investigate the circumstances of any disputed invoice and any decision made by the Company will be final and binding upon the Customer.

8.3 Time for payment shall be of the essence.

8.4 No payment shall be deemed to have been received until the Company has received cleared funds.

8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.6 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 unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.7 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 4% above the base lending rate from time to time of Royal Bank of Scotland 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.

9. Quality

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9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and be reasonably fit for purpose.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- (a) the Customer gives written notice of the problem, damage or defect to the Company, and, if such problem, damage or defect is as a result of incorrect storage or damage in transit to the carrier, within 24 hours of the time of delivery and in the case of latent problems, damage or defects within 24 hours of the discovery of the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

- (a) the Customer makes any further use of such Goods after giving such notice; or
- (b) the problem, damage or defect arises because the Customer failed to store the goods at an appropriate temperature in appropriate storage facilities or 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
- (c) the Customer alters such Goods without the written consent of the Company.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods do not conform with any of the warranties in Condition 9.2 the Company shall at its option replace such Goods or the defective, substandard or damaged part or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective, substandard or damaged to the Company.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

10. Return of Goods

10.1 The Customer must accept delivery of and pay for all Goods it has ordered and may only return Goods to the Company in accordance with Condition 9.5 or if the Company agrees in writing to accept the return of the Goods.

10.2 If the Company agrees to accept the return of any Goods in accordance with Condition 10.1, the Company reserves the right to charge a collection charge to the Customer.

10.3 The Company will not accept the return of the Goods and will not refund the price of any Goods returned under this Condition 10 if the Goods or their packaging have been damaged tampered with or defaced in any way so as to make them unsuitable for re-sale.

11. Limitation of Liability

11.1 Subject to Condition 4, Condition 5 and Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

11.4 Subject to Condition 11.2 and Condition 11.3:

- (a) the Company's total liability in contract, tort (including negligence or 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;
- (b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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.

12. Assignment

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. Force Majeure

13.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business 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, provided that, if the event in question continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

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14. Duration and Termination

14.1 This Contract will commence on the date the Customer completes and signs an AAF and will continue indefinitely until it is terminated in accordance with these Conditions or unless otherwise agreed in writing.

14.2 The Company shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Customer written notice, whereupon the Contract shall be terminated without liability to the Company, if:

- (a) the Customer commits a material breach of any of the terms and Conditions of the Contract; or
- (b) any distress, execution or other process is levied upon any of the assets of the Customer; or
- (c) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (d) the Customer ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Customer deteriorates to such an extent that in the opinion of the Company the capability of the Customer to adequately fulfil its payment obligations under the Contract has been placed in jeopardy; or
- (f) the Customer's business undergoes a Change of Control (as defined by Section 840 of the Income and Corporation Taxes Act 1988); or
- (g) the Customer encumbers or in any way charges any of the Goods.

14.3 The Company shall have the right at any time and for any reason to immediately terminate this Contract without liability to the Customer by giving the Customer notice in writing.

14.4 The Customer shall have the right at any time to terminate this Contract by providing the Company with 14 days notice in writing. Upon the expiry of such notice the Contract shall be terminated.

14.5 If the Customer has ordered speciality Goods which are specified as speciality Goods in the Company's product list and the Customer or the Company subsequently terminates the Contract under Conditions 14.2 or 14.4 before delivery of such speciality Goods then the Customer will be liable to pay for such speciality Goods and payment will become due on the date of termination.

14.6 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

15. General

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 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.

15.4 The Customer shall notify the Company in writing immediately of any change in the Customer's address or of any change in ownership of the business.

15.5 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.

15.6 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.

15.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. Communications

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.

16.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

6.3 Communications addressed to the Company shall be marked for the attention of the Managing Director