

KIRWIN BROTHERS LIMITED  
CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 In these Terms:-

"Buyer" means the person who places an Order for the Goods;

"Contract" means the contract between the Buyer and the Seller for the sale and purchase of the Goods;

"Delivery Point" means the place stated in the Order to which the Goods are to be delivered;

"Goods" means the goods (or any part of them) stated in the Order which the Seller is to supply in accordance with these Terms;

"Order" means the Buyer's order;

"Price" means the price of the Goods as set out in the Order or as may be agreed between the parties from time to time;;

"Seller" means Kirwin Brothers Limited;

"Terms" means these standard terms of sale and includes any special terms agreed in writing between the Buyer and the Seller.

2. Entire Agreement

2.1 These Terms contain the whole agreement between the parties who confirm that they have not entered into the Contract in reliance on any representations that are not expressly incorporated in these Terms. These Terms apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

3. Basis of Sale

3.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Terms which are applied to all Contracts to the exclusion of all other conditions including any conditions which the Buyer may purport to apply under any purchase order confirmation or similar document.

3.2 All Orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Terms.

3.3 No Order submitted by the Buyer shall be binding on the Seller unless and until accepted either in writing or otherwise by the Seller.

3.4 Any variation to these Terms (including any special conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

4. Specifications

4.1 The Buyer shall be responsible for ensuring the accuracy of any Order and providing any necessary information within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms.

4.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Order.

4.3 If the Goods are to be manufactured or subjected to any process in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with any third party claim arising as the result of such manufacture.

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

4.5 No Order 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 against all loss (including loss of profit and loss of revenue and loss of business), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4.6 The Buyer shall not acquire any right or interest and shall not use or disclose any intellectual property rights incorporated in either the Order or the Goods without the prior written consent of the Seller.

5. Price of the Goods

5.1 The Price is exclusive of VAT and payment of the Price shall be due within 7 days of the date of the Seller's invoice ("the Due Date") or on such other date as may be agreed between the parties from time to time. The Buyer shall on receipt of a valid VAT invoice from the Seller, pay to the Seller such

additional amounts in respect of VAT as are chargeable on the supply of the Goods. The Buyer shall pay the Price in full and in cleared funds by the Due Date. Time of payment is of the essence.

- 5.2 The Price excludes the cost of packaging, transport and delivery to the Delivery Point.
- 5.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including increases in taxes and duties and increases in labour, materials and other manufacturing costs) or any delay attributable to the Buyer.
- 5.4 The Seller may invoice the Buyer for the Price on or at any time after delivery of the Goods.
- 5.5 In the event that full payment is not received by the Seller by the Due Date, the Seller may in addition to its rights in clause 7 or clause 12:
  - 5.5.1 charge interest on overdue invoices from the Due Date on a day-to-day basis until full and final payment is received in accordance with the Commercial Debts (Interest) Act 1998 together with any regulations thereunder;
  - 5.5.2 cancel the Contract or suspend any further deliveries to the Buyer; or
  - 5.5.3 appropriate any payment made by the Buyer to such of the Goods as the Seller may deem fit.
- 5.6 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

## 6. Delivery

- 6.1 Delivery of the Goods shall be made by the Seller to the Delivery Point which if the Seller's premises shall be effected by the Seller notifying the Buyer that the Goods are ready for collection.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods caused by a Force Majeure event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Time for delivery shall not be of the essence of the Contract unless previously expressly agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 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 Terms 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. The Seller shall be entitled to render its invoice for those Goods which have been so delivered.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery, then delivery of the Goods shall be deemed to have been completed at 9.00 am on the second day after the day on which the Seller notified the Buyer that the Goods were ready and without limiting any other right or remedy available to the Seller, the Seller may:-
  - 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage plus 1% of net invoice value until delivery; or
  - 6.4.2 sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.
  - 6.4.3 invoice all outstanding tonnage Ordered by the Buyer and not delivered, for payment by the Due Date together with an immediate stocking charge of 3% of net invoice value.

## 7. Property and Risk

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery.
- 7.2 Property and title in the Goods shall notwithstanding delivery remain with the Seller until all sums due and owing by the Buyer to the Seller on any account have been paid and received by the Seller in cash or cleared funds under this and all other contracts between the Seller and the Buyer for which payment thereunder has not been paid.
- 7.3 Pending the transfer of the property in the Goods:-
  - 7.3.1 the Buyer shall hold the Goods as the Seller's bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property and maintain the Goods in satisfactory condition; and
  - 7.3.2 the Seller may without limiting any other right or remedy it may have at any time require the Buyer to deliver up the Goods to the Seller and in default the Buyer hereby grants the Seller a

licence to enter upon any premises of the Buyer and of any third party where the Goods are stored and repossess the Goods.

- 7.4 All payments shall be applied to and deemed to be made in respect of invoices in the order in which they were issued and to Goods in the order in which they are listed in invoices.
- 7.5 The Buyer shall not sell or dispose of any Goods (or documents of title thereto, or any interest therein), except to its customers in the ordinary course of its business and as fiduciary agent for the Seller, and if the Buyer sells or disposes of any Goods, the Buyer shall hold on trust for the Seller and pay to the Seller the full proceeds of sale forthwith upon demand by the Seller.
- 7.6 The Buyer shall not:-
  - 7.6.1 Pledge any Goods or documents of title thereto or allow any lien to arise thereon; or
  - 7.6.2 Use or process any Goods other than in the ordinary course of the Buyer's business.
- 7.7 If:
  - 7.7.1 Payment for any Goods is overdue in whole or in part; or
  - 7.7.2 The Buyer becomes insolvent or bankrupt, or enters into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or passes a resolution for winding up or has a receiver, administrative receiver or manager appointed, or enters into any composition or arrangement with its creditors or suffers any similar action in consequence of debt; or
  - 7.7.3 In the opinion of the Seller the Buyer is or is likely to become unable to pay its debts, or the financial stability of the Buyer is otherwise unsatisfactory; then the Seller shall be entitled to the immediate return of all the Goods sold by the Seller to the Buyer in which property has not passed to the Buyer and the Buyer hereby authorises the Seller to recover such Goods and hereby grants to the Seller an irrevocable licence to enter any premises of or under the control of the Buyer for that purpose. Such authorisation and licence shall be unaffected by the appointment of any receiver, manager, administrator or liquidator in relation to the Buyer. Demand for or recovery of any Goods by the Seller shall not of itself discharge either the Buyer's liability to pay the Price and take delivery of such Goods or of the Seller's right to issue proceedings for any sums due.
- 8. 8 Inspection/Defects
  - 8.1 The Buyer shall inspect the Goods on delivery and unless the Seller is notified within two working days of delivery that the Goods are not in accordance with the Contract or are defective, they shall be deemed to be free from any defect which would be apparent on reasonable examination and to have been accepted by the Buyer and shall be deemed to comply with the Order.
- 9. 9 Warranties and Limitation of Liability
  - 9.1 Subject to the following provisions the Seller warrants that the Goods will correspond with the Order.