

ROYCE THOMPSON CONDITIONS OF SALE



1. CONDITIONS

- 1.1 Subject to any variation under condition 1.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2 No terms or conditions endorsed on, delivered with or contained in the Buyer'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.
- 1.3 Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given on behalf of the Company which is not set out in the Contract. The Company's liability for fraudulent misrepresentation is not limited nor excluded by this condition.
- 1.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy goods subject to these conditions.
- 1.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 1.6 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer.
- 1.7 These conditions are applicable in full on each schedule/call off/blanket order made as they would be to a discrete order.
- 1.8 With regards to schedule/call off/blanket orders the Buyer remains contractually bound until the original quantity specified in the contract has been delivered in full.
- 1.9 Blanket orders must have been fulfilled within 12 months unless expressly agreed in writing by the Company.

2. RISK/TITLE

- 2.1 The Goods are at the risk of the Buyer from the time of delivery.
- 2.2 Ownership of the Goods shall not pass to the Buyer 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 Buyer on any account.
- 2.3 Until ownership of the Goods has passed to the Buyer, the Buyer 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 Buyer 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) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of Insurance to the Company.
- 2.4 The Buyer 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 Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 2.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) The Buyer 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 and/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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.
- 2.6 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.
- 2.7 The Buyer 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 Buyer's right to possession has terminated, to recover them.
- 2.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 2.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 2 shall remain in effect.

3. PRICE

- 3.1 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
- 3.2 Prices in any price list we may publish are subject to alteration or withdrawal without notice.
- 3.3 Unless a quotation has specified that the prices quoted are fixed for the duration of delivery of the Goods specified and quantified in the quotation, quoted prices for Goods ordered are subject to alteration, at not less than one month's notice, to cover any increase in wages and/or material incurred during production of the order. In the event that the rate of Value Added Tax is altered in respect of the Goods ordered and quoted for then the Company reserves the right to amend the Value Added Tax when submitting its invoice.

4. PAYMENT

- 4.1 Subject to condition 4.3 payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods have been despatched or notification is made by us that the goods are ready for despatch. The time for payment shall be of the essence of the contract.
- 4.2 No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.3 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 4.4 The Buyer 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 Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 4.5 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at a rate of 5% accruing monthly until payment is made in full, whether before or after judgement. (a part of one month being treated as a full month for the purposes of calculating interest.) The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.6 Failure to make any payment on the due date will without prejudice to any other right or remedy available to the Company, entitle the Company to:
- (a) cancel the contract or suspend further deliveries to the Buyer
- (b) appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation to the Buyer).

5. CANCELLATION

- All orders cancelled after acknowledgement are subject to a cancellation charge of 60% of the total amount of the Goods cancelled. This amount is subject to change without notification.

6. SAMPLES

- Any samples submitted to the Buyer and not returned to the Company's Works within one month from the date of receipt shall be paid for by the Buyer.

7. MINIMUM ORDER CHARGE

- All orders are subject to a minimum order charge of £150 pounds sterling, which is subject to periodic revision.

8. CARRIAGE

- All orders under £500 sterling will incur a carriage charge of £9 sterling which is subject to change without notification.

9. DESCRIPTION

- All samples, drawings, 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.

10. DELIVERY

- Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. You shall take delivery of the Goods within 14 days of the Company giving the Buyer notice that the Goods are ready for delivery.

11. DESPATCH

- 11.1 Any dates and times specified by the Company for despatch of the Goods are to be treated as estimates only 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.
- 11.2 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 any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days or unless an amount payable in respect thereof has been agreed in writing as liquidated damages at the date of the contract, in which case the Company's liability shall be limited to the amount so agreed to be paid in all cases.

11.3 Costs of damage, carriage and insurance may be charged in addition to the price.

- 11.4 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 11.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment. Shortages in any instalments may be made good in any subsequent deliveries.
- 11.6 Additional charges may be made if the Buyer request delivery outside normal working hours

12. STORAGE

- If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the notification that they are ready for dispatch or if for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, either at their own works or elsewhere, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, transport to storage and insurance).

13. NON-DELIVERY

- 13.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 13.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless reported to the Company by the Buyer within 48 hours of delivery and this confirmed in written notice to the Company within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 13.3 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.

14. SHIPPING SPECIFICATIONS

- These are approximate and the Company does not accept the responsibility for extra freight incurred if their cases exceed dimensions or gross weight previously quoted by the Company.

15. EXPORT

- Unless otherwise specified all prices for export shipments are ex-works. Packing and cases are charged extra and are non-refundable. All accounts for exported goods are to be paid for in Sterling against Bills of Lading unless otherwise agreed. The Company will not arrange for the goods to be insured against loss or damage during transit unless the Buyer notifies the Company in writing that the Buyer wishes the Company to undertake this service, in which case the cost of such insurance will be charged as an addition to the net price of the goods.

16. QUALITY

- 16.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from the date of delivery, unless another term has been explicitly agreed in writing by the Company the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- (b) be reasonably fit for purpose; and
- (c) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

- 16.2 The Company shall not be liable for a breach of any of the warranties in condition unless:

- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (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.
- 16.3 The Company shall not be liable for a breach of any of the warranties in condition 15.1 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer 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 Buyer alters or repairs such Goods without the written consent of the Company.

- 16.4 The Company shall at its option repair or replace any defect which under proper use appear in the Goods within the guarantee period specified in our literature and arising solely from faulty design, materials or workmanship, other than a design made, furnished or specified by the Buyer for which the Company has disclaimed responsibility. Provided always that defective parts have been returned to the Company if the Company shall have so required, the Company shall refund the cost of such carriage on such returned parts and the repaired or new parts will be delivered by the Company free of charge.
- 16.5 The Company will accept liability for the cost of repair or replacement of the component only and not any subsequent cost incurred in the components repair or replacement.
- 16.6 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the original Goods guarantee.
- 16.7 For the avoidance of doubt, warranty does NOT cover any costs incurred in gaining access to sites, access to lighting columns or luminaries, traffic management or other consequential costs incurred in repair or replacement of the product

17. FORCE MAJEURE

- 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 Buyer (without liability to the Buyer) 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 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

18. GENERAL

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.5 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.
- 18.6 A reference to the Late Payment of Commercial Debts (Interest) Act 1998 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.
- 18.7 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.

19. INTERPRETATION

- 19.1 The definitions and rules of interpretation in this condition apply in all the above conditions.
- BUYER: they person firm or company who purchases the Goods from the Company.
- COMPANY: Royce Thompson, subsidiary of THOMAS & BETTS LIMITED.
- CONTRACT: any contract between the Company and the Buyer for the sale and purchase of Goods, incorporating these conditions.
- DELIVERY POINT: the place where delivery of the Goods is to take place under condition 9.
- GOODS: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part to parts of them).
- 19.2 Words in a singular include the plural and in the plural include the singular.
- 19.3 Condition headings do not affect the interpretation of these conditions.