

BOOMER INDUSTRIES LIMITED

TERMS AND CONDITIONS OF SALE

1. DEFINITION

In these conditions of sale all references to "Seller" are to Boomer Industries Limited and all references to "Buyer" are to the person, firm or company by whom the order is placed.

2. GENERAL

The Contract is subject to these terms and conditions of sale which override any differing conditions whether oral, on the Buyer's Order Form or the Buyer's other document unless otherwise expressly agreed by the Seller in writing.

3. QUOTATIONS

A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise the same at any time prior to the Seller's acceptance of the Buyer's order.

4. PRICE

All goods supplied are subject to the Seller's price ruling at the date of dispatch to the Buyer, unless otherwise agreed in writing by the parties at the date of Order/Acceptance. Where applicable value added tax will be applied in accordance with United Kingdom legislation in force at the tax point date. Unless otherwise specifically agreed in writing by the parties all prices exclude carriage, insurance and packaging charges which will be charged to the Buyer.

5. TERMS OF PAYMENT

Payment shall be made in full by the Buyer to the Seller without any deduction or set off in accordance with these terms and conditions. On failure by the Buyer to settle any invoice within 30 days (or in accordance with the terms agreed) the Seller may charge the Buyer interest on the overdue accounts at the rate of 5% above the base rate for the time being of the National Westminster Bank Ltd. from the due date thereof until receipt by the Seller of the full amount whether or not after judgement.

6. PATENT etc. INFRINGEMENT

The Buyer shall be solely responsible for the consequences of any patent, trademark, design or copyright infringement or any other infringement of a third party's legal rights resulting from the Buyer's specification or use of any of the said goods and equipment and the Buyer shall fully indemnify the seller as a result of all costs, charges and expenses incurred by the Seller as a result of any such infringement or alleged infringement.

7. DELIVERY

Delivery dates mentioned in any quotation, acknowledgment of order or elsewhere are given in good faith and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Unless otherwise specifically agreed in writing between the parties the Seller may effect delivery of the goods and equipment by whatever means the Seller considers most appropriate. If the Buyer refuses or fails to take delivery of goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment of the goods so tendered. The Seller shall be entitled to store at the risk of the Buyer any goods of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs of such storage (including insurance) and any additional costs incurred as a result of such refusal or failure. The Seller shall be entitled in the case of short life products immediately to dispose of the same in such a manner as the Seller may determine and in the case of all other products the Seller shall be entitled after the expiration of one month from the date of refusal to take delivery to dispose of the goods in such manner as the Seller may determine. Unless otherwise specifically agreed in writing by the Seller under no circumstances can cancellation of any order be accepted. In the event of any goods being returned as a result of such cancellation, the Seller reserves the right to charge all carriage insurance and packaging to the Buyer and the Seller's certificate as to the quantity of returned goods and equipment received by the Seller shall be final and binding.

8. PASSING OF PROPERTY AND RISK

No property in the goods supplied shall pass from the Seller to the Buyer unless and until the Seller has received payment in full for such goods and for any other debts owed by the Buyer to the Seller on any other account whatsoever. Until payment in full the Buyer shall store the goods in such a way as to enable them to be identified as the property of the Seller and shall hold such goods as bailee for the Seller provided that the Buyer may sell the goods in the normal course of business to its bona fide customers. The risk in the goods shall pass to the Buyer at the point of delivery stated in this contract unless otherwise agreed by the parties in writing. The Seller reserves the right to repossess and uplift any goods (including goods incorporated in other products) supplied to the Buyer and the Buyer's right to possession shall cease forthwith in the following events:

(a) The Buyer has not paid all amounts due to the Seller on any account whatsoever;

(b) The buyer is declared bankrupt or makes any proposal to his creditors for the composition or other voluntary arrangement;

(c) A receiver or liquidator or administrator is appointed in respect of the Buyer or the business of the Buyer

and thereafter the Seller may resell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to the Seller's employees and agents to enter upon all or any of its premises or the premises of any third party on which the goods or other products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

9. VARIATIONS

The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity may be up to 5% more or less than the quantity specified in the contract and in such event the Buyer shall pay for the actual quantity delivered.

10. NOTIFICATION OF FAILURE OF DELIVERY IN ACCORDANCE WITH CONTRACT

The Buyer shall notify the Seller and the carrier of any shortage in the quantity actually delivered or of any damage to or defect in the goods. Such notification shall be made by telephone or fax as practicable after delivery and in every case shall be confirmed in writing within seven working days of delivery of the goods. In the event of the Buyer failing to give both the Seller and the Carrier such written notice then the Buyer shall be deemed to have accepted the goods in the quantity and stage in which they were actually delivered and the Buyer shall be deemed to have waived any claim. Where the Buyer alleges any shortage in the quantity actually delivered or any damage to or defect in the goods, the goods shall immediately be placed aside for inspection by the Seller and its authorised representatives. The Seller may at its option make good any shortage or non delivery and/or as appropriate replace or repair any goods found to be damaged.

11. LIABILITY

The Seller shall not be liable for the defects in the goods caused by any act neglect or default of the Buyer or of any third party or for the unsuitability of the goods for mixing with other goods or substances. The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods determined by the net price invoiced to the Buyer in respect of any occurrence or series of occurrences. Examination of the goods to be supplied has been made by or on behalf of the Buyer prior to the placing of an order and no warranty, condition, description or representation on the part of the Seller is given or implied from anything said or written in the negotiations between the parties or their representatives prior to the placing of any order for goods and equipment. Subject to the foregoing all conditions, warranties and representations expressed and implied by statute, common law or otherwise in relation to the goods are hereby excluded to the full extent permitted by law.

12. INTERFERENCE WITH MARKINGS

The Buyer shall not alter, obscure, remove, conceal or otherwise interfere with any markings or other identification of source or origin placed by the Seller on the goods, or on their labeling or packaging.

13. THIRD PARTY RIGHTS

If the Buyer uses or sells the goods in such a manner as to infringe any rights of a third party the Seller shall not be responsible for any such infringement nor for any alleged infringement arising from the Buyer's action in relation to the goods and the Buyer hereby agrees to indemnify the Seller from and against all liability arising there from. The Buyer shall not make any representations, warranties or guarantees with reference to goods supplied by the Seller except such as are consistent with these terms and conditions.

14. INTERPRETATION OF EXPORT TERMS

The interpretation of trade terms shall be in accordance with Incoterms 1980 (current reprint) unless expressly overridden by these terms and conditions.

15. FORCE MAJEURE

If the supply of goods by the Seller is prevented, hindered, delayed or rendered uneconomical by reason of circumstances or events beyond the Seller's reasonable control including but not limited to act of God, restrictions, restraint or interference by any Government or governmental or official body or any legislation, rules or orders they may make, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, severe weather conditions, difficulty or increased expense in obtaining labour, materials or transport, or other circumstances affecting the supply of the goods or of raw materials therefore by the Seller's normal means of supply or the manufacture of the goods or the means of delivery, the Seller shall be under no liability to the Buyer and shall have the right to cancel or suspend the whole or any part of the Seller's unfulfilled obligations and in the event of any such cancellation or suspension to treat the terms of this contract as having been modified accordingly by mutual consent.

16. INSOLVENCY AND DEFAULT

If the Buyer shall become bankrupt or commits any act of bankruptcy, or if the Buyer goes or is put into liquidation otherwise than by voluntary liquidation for the purpose only of an amalgamation or reconstruction, or if the Buyer shall enter into any arrangement or composition with creditors, or if a receiver or Administrative Receiver of the Buyer's assets or undertakings or any part thereof is appointed, or if the Buyer commits any breach of this or any other contract between the Seller and the Buyer, the Seller may at its option cancel this contract and refuse to make any further delivery.

17. ASSIGNMENT

This contract is between the Seller and the Buyer as principles and is not capable of assignment or subcontracting by either party except with the written consent of the other.

18. AMENDED TERMS AND CONDITIONS

Any amendments to these terms and conditions shall be of no effect unless agreed in writing between the Seller and the Buyer.

19. WAIVER

Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No exercise of any one right or remedy under these terms and conditions or at law or in equity shall (save to the extent, if any, provided expressly under these terms and conditions) operate so as to hinder or prevent the exercise of any other right or remedy howsoever at law or in equity.

20. SEVERANCE OF CONDITIONS

In any of these terms and conditions or any portion of same shall be held to be invalid or unenforceable in whole or in part under any enactment or law pursuant to the relevant Contract Law under Clause 21 such term or condition or portion of the same shall to that extent only be deemed not to form part of these terms and conditions and the validity and enforceability of all the remaining terms and conditions shall not be affected.

21. LAW AND ARBITRATION

This contract shall be governed and construed in accordance with the laws of Northern Ireland and any dispute arising hereunder shall be settled by arbitration in Northern Ireland by reference to a single arbitrator agreed upon between the parties or failing agreement appointed by the President of the Law Society of Northern Ireland and as provided by the Arbitration Act (NI) 1937 or any statutory modification or re-enactment thereof from time to time in force.