

# CONDITIONS OF SALE

## 1. GENERAL

- (a) These Conditions of Sale shall apply to all contracts made between HINTON, PERRY, & DAVENHILL LIMITED (the Company) and any Purchaser of the Company's products (the Purchaser) unless otherwise agreed in writing. The Company is not willing to contract otherwise than on these Conditions and any printed or standard conditions which appear or are referred to on any documents emanating from the Purchaser are to have no legal effect whatsoever. These Conditions shall also apply mutatis mutandis to the supply of replacement goods by the Company in compliance with any obligation to replace defective goods arising hereunder.
- (b) The Company has drawn up these Conditions of Sale in the light of the Unfair Contract Terms Act 1977 and considers them to be fair and reasonable and its prices are based on contracts made on these Conditions. If the Purchaser considers these terms to be unreasonable, he must inform the Company in writing before any contract is made, otherwise he will be deemed to have accepted that the Company Conditions are fair and reasonable.

## 2. FORMATION OF CONTRACT

- (a) Quotations may be withdrawn by the Company at any time and if not withdrawn shall lapse thirty days from their date.
- (b) If the Purchaser wishes to rely upon any statement or any representation made by the Company (other than any such contained in documents enclosed with any quotation of the Company) he shall set out such statement or representation in his Order. The Company reserves the right to clarify any such statement on representation and to submit a new quotation if appropriate.
- (c) All quotations are made and all orders are accepted by the Company subject to these Conditions.
- (d) No order shall become binding upon the Company until it has been expressly accepted by the Company in writing.
- (e) No alteration to any contract of any of these Conditions shall be binding on the Company unless agreed to in writing.

## 3. PRICES AND QUANTITIES

- (a) The price stated in any quotation or any contract is fixed only where the Company has expressly so stated and given a period during which the price is fixed. In all other cases the Company reserves the right at any time to alter any of its prices without any notice whatsoever. In respect of goods delivered after any such change of price the price charged shall be the price current at the date of despatch of the goods by the Company.
- (b) Tiles are supplied on wooden pallets with a nominal quantity of 1000 tiles per pallet. This figure will vary across individual pallets.

## 4. SAMPLES AND SPECIFICATIONS

- (a) Any sample supplied by the Company to a Purchaser is intended only to give a general indication of the quality, colour and/or type of the product and shall not render any subsequent sale a sale by sample.
- (b) The Company shall not be under any obligation to check or to verify the accuracy or adequacy of any plans or specifications supplied by the Purchaser for the manufacture of any goods; the Purchaser shall make good and indemnify the Company against any loss, expense or liability incurred arising directly or indirectly from any inaccuracy, omission, error or fault in such plans or specifications.
- (c) Only where it has been undertaken in its quotation to supply goods in conformity with a particular British Standard shall the Company be obliged to supply goods complying with British Standards. In all other cases the Company does not guarantee precise specifications of the goods.
- (d) In the ordinary course of developing its Products the Company reserves the right to alter the specifications of any of its Products or to delete any Product from its range without notice.

## 5. DELIVERY

- (a) Any quotation by the Company of a time for delivery is quoted to the best of the Company's ability but is not guaranteed nor does it form a term of the contract and time for delivery is not of the essence of any contract. The Company will endeavour to comply with any dates so quoted but is under no absolute obligation to do so and will not be liable for any failure to meet a delivery date nor for loss or consequential loss of any kind arising from delay in delivery howsoever caused.
- (b) So long as any circumstances whatsoever beyond the control of the Company may hinder or delay delivery the Company shall not be liable in any way for its inability to make delivery.
- (c) The Company will endeavour to comply with reasonable requests by the Purchaser to postpone delivery but shall be under no obligation to do so. Without prejudice to any right of the Company to damages or any other remedy for breach of contract the Company shall have the right to cancel the contract if collection or delivery is delayed by the Purchaser for a period exceeding 30 days. In the event of the Purchaser requesting or otherwise causing a delay in delivery or refusing delivery the Purchasers shall be liable for all loss and expenses including any storage and transportation charge which may be raised by the Company which the Company may incur.
- (d) Where the price includes delivery to site delivery will be effected at the nearest point via and on a hard road suitable for vehicles. The Purchaser will be responsible for any loss or expense suffered by the Company due to any delay in off-loading. If the delivery vehicles are required to deliver at any time off a hard road the Purchaser will be responsible for any damage to vehicles, roadway, pipes, manholes, cables and other property of any sort resulting there from.

## 6. TERMS OF PAYMENT

- (a) Unless otherwise agreed in writing the Purchaser shall pay for all goods supplied on or before the date of dispatch.
- (b) Where goods have been supplied on credit payment must be received by the last day of the month in respect of goods dispatched in the previous month.
- (c) In the event that payment is not made in accordance with the foregoing provisions the Company shall be entitled to charge interest (whether before or after judgment) at a rate which shall be four per centum per annum above the Base Rate of the Company's Bankers during the period of delay; and to withhold further deliveries or to cancel any unexecuted part of the contract without liability for any consequential loss of profit or other loss or damage suffered by the Purchaser. In the event of any such cancellation or suspension of deliveries:

- (i) The Purchaser will be liable to pay the Company the price for all goods which have been delivered to the Purchaser under whatever contract for which payment has not been made.
- (ii) Any rights that the Company may have against the Purchaser shall continue in full force and effect.

## 7. RISK AND TITLE

- (a) Risk in respect of loss or damage to the goods shall pass to the Purchaser when goods are unloaded in cases where the price includes delivery; and immediately upon loading when the goods are collected by or on behalf of the Purchaser from the premises of the Company.
- (b) Title to the goods will pass when the Purchaser makes payment in full or when the Purchaser re-sells the goods to a third party in the usual course of the Purchaser's business in accordance with the licence hereinafter granted.
- (c) Until such time as title passes in accordance with sub-clause (b) hereof the Purchaser shall:

- (i) store the goods separately from any other goods on his premises
- (ii) mark the goods clearly as the property of the Company
- (iii) not interfere with deface or remove any identification marks or numbers on the goods.

- (d) The Purchaser grants to the Company its employees and agents an irrevocable licence to enter any premises where the goods are stored or believed to be for the purposes of retaking possession or of otherwise disposing of the goods at any time before title has passed.
- (e) The Company grants to the Purchaser a Licence to use the goods or any part thereof in the course of its normal business operations or to sell the same on the condition that so much of the proceeds of such sale as shall be required to satisfy the payment due to the Company in respect of the goods sold shall be held upon trust for the Company in a separate bank account.
- (f) Until such time as title passes in accordance with clause (b) above the Purchaser shall have no right to mortgage charge or otherwise encumber or deal with the goods save as provided in sub-clause (e) hereof.

## 8. RE-POSSESSION OF GOODS

If at any time before title in the goods has passed from the Company pursuant to the provisions of condition 7 above the Purchaser defaults for more than 28 days in making any payment to the Company in respect of such goods after the due date for such payment or if the Purchaser deals with the goods in any manner (other than as permitted in Condition 7 above) adverse to the Company's title or has a receiving order made against him or is made bankrupt or (where the Purchaser is a limited company) enters into liquidation or if a Receiver is appointed over the whole or any part of the Purchaser's assets or undertaking or if the goods are seized under any execution or distress or other form of legal process the Company shall be entitled to recover possession of all such goods, so long as they are still identifiable, forthwith and shall be entitled to enter upon the premises of the Purchaser and remove all those goods and shall not be liable for any damage or injury reasonably done to any other property owned by or in the possession of the Purchaser to which the Company's goods have been attached or in which they have been incorporated during the course of removing the Company's goods and retaking possession thereof.

## 9. SHORTAGES AND DEFECTS APPARENT ON INSPECTION

The purchaser shall have no claim against the Company for shortages and/or colour shape size texture and other defects apparent on inspection unless: (i) the Purchaser inspects the goods within three days after taking delivery thereof; and

(ii) a written complaint is made to the Company within fourteen days after the Purchaser has taken delivery of the goods specifying the particular matter complained of; and

(iii) the Company is given an opportunity to inspect the goods and to investigate any complaint before any use is made of the goods.

## 10. DEFECTS NOT APPARENT ON INSPECTION

- (a) The Purchaser shall have no claim against the Company in respect of defects not apparent on inspection unless:
- (i) a written complaint is made to the Company as soon as is reasonably practicable after the defect is first noticed and no use is made of the goods thereafter until the Company is given an opportunity to inspect the goods; and
- (ii) the complaint is made within 10 years of the date of delivery of the goods; and
- (iii) the defect is not due to fair wear and tear, incorrect exposure to weather or misuse.
- (b) The Purchaser is solely responsible for ensuring that goods used are suitable for the purpose for which they were required and shall not be entitled to make any claim in respect of defects attributable to unsuitable use.

## 11. LIABILITY

- (a) The liability of the Company for any failure to supply or any defect or want of quality in goods supplied shall not exceed an amount equal to the invoice price of the goods in respect of which complaint is made save in the case of death or personal injury where the Company is shown to have failed to exercise reasonable care in the manufacture and supply of the goods.
- (b) Conditions 9 and 10 and sub-clause (a) of this Condition 11 are intended to provide a fair means of resolving disputes about the quality of goods supplied and except as provided therein and except as the law in force for the time being shall otherwise provide the Company shall not be liable for any damage, injury or loss of any kind whatsoever (including without limiting the effect of those words any loss of profit or of contracts or any other consequential loss but excluding damages for death or personal injury caused by negligence for which the Company is responsible) to any property or persons howsoever caused arising out of any defect in the goods.
- (c) Except as hereinbefore expressly provided all warranties and conditions (including any warranties or conditions as to quality or fitness for any particular purpose) whether express or implied by statute, common law or otherwise are excluded and hereby negated.
- (d) The Company's liability for any misrepresentation or breach of any warranty collateral to any contract for the supply of goods shall be limited to a liability to replace the goods supplied or to repay the Purchaser the purchase price of the goods.

## 12. EXCLUSION OF SET-OFF

The Purchaser shall not be entitled to the benefit of any set off to which he might be otherwise entitled in law or equity. All sums payable hereunder shall be payable without any deduction and the Company shall be entitled in the event of non payment to obtain and enforce judgment thereon without any stay of execution pending the determination of any cross-claim by the Purchaser. The reason for this condition is that the Company has incurred expense in the manufacture preparation or acquisition of the goods for sale and it is not reasonable for the Purchaser to be allowed to withhold payment therefore until such time as the justice of any cross-claim which he may assert shall have been determined.

## 13. PACKING

Pallets, crates and packing cases when invoiced will be credited if returned within one month, carriage paid, to the Company at Dreadnought Works, Pensnett, Brierley Hill, West Midlands, DY5 4TH in good condition. If they are not so returned they must be paid for in accordance with the provisions of Condition 6.

## 14. RIGHTS OF SUB-CONTRACT AND OF ASSIGNMENT

The Company shall be entitled to sub-contract any part of its obligation for the supplying of goods. The Purchaser shall not be entitled to assign any contract without the prior written consent of the Company.

## 15. FORCE MAJEURE

The Company shall not be under any liability for any delay loss or damage caused wholly or in part by any act of God; government instruction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves employees of the Company or not nor by reason of any act matter or thing beyond reasonable control of the company.

## 16. GOVERNING LAW

The contract shall in every respect be governed by English Law and the English Courts, to whose jurisdiction the Purchaser submits by entering into a contract with the Company on these Conditions, shall have exclusive jurisdiction in the event of any dispute arising out of or in connection with any contract made on these conditions.