

GENERAL CONDITIONS OF SALE

- 1 GENERAL**
- 1.1 In the Conditions (i) "the Seller" shall mean Agma; (ii) "Goods" shall mean any goods which from time to time the Seller offers to sell on the basis of these conditions; (iii) "the Buyer" shall mean the person, firm or company who places an order with the Seller or otherwise agrees to buy goods or services from the Seller.
- 1.2 These Conditions shall govern and form part of every contract between the Seller and the Buyer. Any variations, cancellation or waivers of these General Conditions ("Special Conditions") must be in writing and signed by a Director duly authorised for and on behalf of the Seller.
- 1.3 Each clause and sub-clause of each clause of these Conditions shall (so far as the contract permits) be read and construed independently of the other clauses and sub-clauses so that if one or more of them shall be held to be invalid, this shall not affect the validity of the remaining clauses or sub-clauses.
- 1.4 Any terms put forward by a Buyer shall, to the extent that they are not identical or coextensive with these General Conditions or any Special Conditions, are expressly rejected and form no part of the contract.
- 1.5 No binding contract shall be created by the placing of an order by the Buyer. A binding contract shall be created upon the earliest to occur of:
- 1.5.1 any event specified in a written Contract Confirmation issued by the Seller;
- 1.5.2 delivery of the Goods to the Buyer; and
- 1.5.3 the Buyer taking control of the Goods.
- Delivery of the Goods shall be deemed to have occurred when the Seller's delivery note has been signed or if no such delivery note is signed, at the time of arrival of the Seller's vehicle at the Buyer's premises.
- 1.6 Nothing in these Conditions shall affect the statutory rights of a consumer.
- 1.7 Nothing in these Conditions shall be construed as excluding or restricting the liability of the Seller for Death, or personal injury resulting from the negligence of the Seller.
- 2 CATALOGUES AND ADVERTISEMENTS**
- 2 Whilst the Seller believes that all specifications, illustrations, performance data and other information contained in any catalogue and advertisements are as accurate as reasonably possible, they do not constitute a description of the Goods and shall not be taken to be representations made by the Seller and are not warranted to be accurate.
- 3 ALTERATIONS AND MODIFICATIONS**
- 3 Alterations and modifications or improvements may from time to time and without notice to the Buyer be carried out on the Goods.
- 4 QUOTATION AND DELIVERY DATES**
- 4.1 Any quotation in whatever form given by the Seller is given subject to these Conditions as an invitation to treat and does not constitute an offer to sell. Quotations issued by the Seller are for guidance only.
- 4.2 Any delivery date or delivery period mentioned in any quotation or Contract Confirmation is the Seller's best estimate and time shall not be of the essence in relation to any such date or periods.
- 5 PRICES**
- 5.1 Prices for the Goods are as referred to in the Seller's current price list, including the prices for separate instalments of the Goods. Unless otherwise stated prices are exclusive of value added tax and any other tax or duty. The Seller shall have the right to alter any of its prices without notice and the relevant price list shall be that ruling at the date of despatch of the Goods to the Buyer.
- 5.2 The Buyer shall have no right of set-off whether statutory or otherwise;
- 5.3 Unless otherwise stated in the Special Conditions, prices quoted are inclusive of (carriage) (handling) (and any insurance charges).
- 6 PACKAGING**
- 6 Non-returnable packaging is used if practicable but the Seller shall have the right to charge for packaging where necessary. The packaging charge shall be credited in full if the packaging is returned in good condition to the Seller.
- 7 PAYMENT AND DEFAULT BY BUYER**
- 7.1 Subject to the following sub-clauses of this clause payment for the Goods shall be made on the day of delivery to or assumption of control by the Buyer, unless the seller has agreed in the Special Conditions to allow a period of credit, in which case the Buyer shall pay the Seller in full for the Goods 30 days after the date of the invoice for them.
- 7.2 If the Buyer fails to make payment by the due date, or otherwise commits a breach of these Conditions, the Seller may in its absolute discretion and without prejudice to any other rights it may have:
- 7.2.1 suspend all future deliveries or supplies to the Buyer under the contract or under any other contracts and/or terminate all or any part of such contract(s) without liability upon its part;
- 7.2.2 require payment in advance for any future deliveries;
- 7.2.3 (in the case of non-payment on or before the due date or on demand as mentioned in the following sub-clause) charge interest on the amount due on a day to day basis at the rate of 5% above Barclays Bank base rate from time to time from the time of delivery or delivery of invoice whichever is the earlier until the date of actual payment whether before or after judgement.
- 7.3 The Seller shall also have all the rights referred to in the preceding sub-clause (without prejudice to any other rights which it may have) and may demand immediate payment of all sums whether or not due if:
- 7.3.1 any distress or execution shall be levied upon any goods or the Buyer or;
- 7.3.2 the Buyer offers to make any arrangement with its creditors or;
- 7.3.3 a petition in bankruptcy is presented against the Buyer or;
- 7.3.4 any resolution or petition to wind up the Buyer is passed or presented or;
- 7.3.5 any petition for an administration order is presented or;
- 7.3.6 a receiver or manager is appointed over the whole or any part of the Buyer's assets or;
- 7.3.7 if the Seller reasonably believes the Buyer is insolvent.
- 8 NON-DELIVERY, DAMAGE IN TRANSIT AND DISCREPANCIES**
- 8.1 The Seller must be advised in writing of any non-delivery within fourteen days after date of despatch, otherwise the Seller will not be liable for any non-delivery.
- 8.2 Subject to these Conditions, the Seller will not be responsible for any Goods damaged in transit or short-weighted unless the Buyer reports the matter in writing both to any carriers and to the Seller within three days after receipt of the Goods.
- 9 RISK**
- 9.1 The risk in the Goods shall pass to the Buyer at the time when they are loaded on the the vehicle of the Buyer or the Buyer's carrier, or (if the Seller is to deliver the Goods to the place specified by the Buyer) when the Goods arrive at their destination, or when the Buyer takes control of the Goods, whichever shall be the earlier.
- 9.2 If any agent of the Seller takes part in any loading or unloading of the Goods free of charge, the Seller shall incur no liability thereby, and the Buyer shall indemnify the Seller in respect of all claims costs and liabilities arising out of such loading or unloading.
- 10 PROPERTY IN THE GOODS**
- 10.1 The property in the Goods shall remain in the Seller until such time as the Buyer has paid in full (i) the price for the Goods and (ii) all other sums owing at the date of payment of such price by the Buyer to the Seller on any account whatsoever and howsoever arising.
- 10.2 The Seller shall be entitled to appropriate any payment made by the Buyer to settlement (or partial settlement) of such amounts owing by the Buyer to the Seller as the Seller in its absolute discretion thinks fit notwithstanding any purported appropriation to the contrary by the Buyer.
- 10.3 The following provisions shall apply until such time as property in the Goods passes to the Buyer.
- 10.3.1 The buyer will endeavour so far as possible to store the Goods in such a manner that they can be identified as property of the Seller.
- 10.3.2 Subject to the other provisions of this sub-clause the Buyer shall be at liberty to sell or use the Goods in the ordinary course of its business and the Seller grants the Buyer a licence for that purpose.
- 10.3.3 The said licence to sell will automatically terminate if a receiver is appointed of any of the assets of the Buyer or if a petition is presented or order is made or resolution is passed to wind up the Buyer, or if a petition is presented for administration of the Buyer, or if a bankruptcy order is made against the Buyer.
- 10.3.4 The Seller may terminate the said licence to sell at any time by written notice if the Buyer is in default in paying any sum to the Seller.
- 10.3.5 At any time after the said licence to sell has terminated the Seller may repossess the Goods and by its acceptance of delivery of the Goods the Buyer grants the Seller and its agents irrevocable licence to enter any premises of the Buyer for the purpose of such repossession.
- 10.4 Notwithstanding that property in the Goods has not passed from the Seller, the Seller may sue the Buyer for the price of the Goods.
- 11 PROPERTY IN MIXED/NEW GOODS**
- 11.1 If any of the Goods shall be incorporated in or mixed with other items to form new items ("New Goods") and if immediately before such incorporation or mixing property in the Goods remained with the Seller, then the property in the whole of the New Goods shall be and remain with the Seller until the payment referred to in 10.1 has been made.
- 11.2 The provisions of sub-clauses 10.3.1-5 and clause 12 shall apply to the New Goods mutatis mutandis.
- 12 PROCEEDS OF SALE**
- 12 If, before the Seller has received the payment referred to in 10.2, the Buyer shall receive sums from a third party in respect of any of the Goods or New Goods, the Buyer will hold those sums upon trust for the Seller and will ensure that those sums are not mixed with any other monies or paid into any overdrawn bank account.
- 13 EXCLUSION OF LIABILITY**
- 13 The Seller shall not be responsible for any damage whatsoever which may be caused by any application of the Goods.
- 14 The Seller gives no warranty or conditions that the Goods are suitable for any specific purpose, even if that purpose is known to the Seller. No employee, agent or other person engaged by the Seller is authorised to give any such warranty or condition or advice or statement in relation to the suitability, performance or capability of the Goods, except a Director of the Seller in writing.
- 15 The Buyer must inspect the Goods on receipt and satisfy itself that they are fit for the Buyer's purpose and must reject such (if any) of the Goods as are defective. The Seller will replace any such defective Goods free of charge.
- 16 Each and every warranty, condition and other term implied by law as to the quality or fitness for any particular purpose of the Goods is excluded.
- 17 17.1 Subject to these Conditions and to statute, the Seller shall be under no liability to the Buyer whatsoever for any defect in, failure of, or unsuitability for any purpose of the Goods or any part thereof whether or not the same be due to the act or omission, negligence or default of the Seller or its servants or agents, and all conditions, warranties and other terms whether expressed or implied, statutory or otherwise, inconsistent with the provisions of these Conditions are hereby expressly excluded.
- 17.2 Subject to the terms of these Conditions and to statute, the Seller's total liability to the Buyer (except in the case of death or personal injury) whether for negligence breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the cost of the defective or undelivered goods determined by the net invoice to the Buyer.
- 17.3 In no circumstances, shall the seller be liable for any of the following loss or damage suffered by the Buyer howsoever caused and whether foreseeable or contemplatable:-
- 17.3.1 economic loss (which shall include loss of profits, business revenue, goodwill and anticipated saving);
- 17.3.2 any claim made against the Buyer by any third party.
- 17.4 The Seller's prices are determined on the basis of the limits of liability set out in these conditions. If the Buyer requires the Seller to accept a higher limit of liability, the Buyer shall give written notice of this whereupon the Seller will accept such liability providing insurance can be obtained against that higher level of liability and providing the cost of such insurance is borne by the Buyer.
- 17.5 Where the Buyer deals as a consumer within the meaning of that expression under the Unfair Contract Terms Act 1977 none of the statutory rights of the Buyer are excluded by these Conditions and the statutory rights of the Buyer as consumer shall remain in full force and effect.
- 17.6 Where the Goods supplied to the Buyer are "Consumer Goods" and the Buyer is a "Consumer" within the meanings given to those expressions under the Consumer Protection Act 1987, none of the statutory rights of the Buyer are excluded or in any way limited and shall remain in full force and effect.
- 18 SELLER'S INDEMNITY**
- 18.1 Where the Seller pay damages to any person for personal injury or property damage (whether pursuant to a court order or compromise or otherwise) arising from the Goods, then the Buyer shall indemnify the Seller to the whole of such amount unless the Buyer can prove that the defect did not arise from any cause within his control.
- 18.2 If a claim is made against the Seller in respect of liability under the Consumer Protection Act 1987 in circumstances where a like claim could have been made against the Buyer in contract, and if the Seller shall make a payment (whether pursuant to a court order or compromise or otherwise) in respect of that claim, then the Buyer will indemnify the Seller to the extent of one half of such payment.
- 19 GENERAL LIEN**
- 19.1 The Seller shall have a general lien over all goods of the Buyer in its possession for all monies due to the Seller or liabilities incurred by the Seller upon whatever account and shall also be entitled to apply any monies of the Buyer held by it under one contract to the discharge of monies due to it under any other contract. The Seller shall be entitled to charge reasonable rent and other expenses, incurred during all periods in which a lien on goods is being asserted. In addition, if the Seller exercises its rights of lien over any goods then if monies due are not paid within one month after it has first retained such goods or if the circumstances mentioned in clause 7.3 arise, the Seller shall have power, without giving notice, to sell the whole or any part of such goods and to apply the net proceeds of sale towards the monies due and expenses of sale.
- 19.2 Nothing in this clause shall affect the rights given to the Seller by statute to sell or dispose of such goods of the Buyer.
- 20 FORCE MAJEURE**
- 20 Without prejudice to the generality of any of the foregoing conditions, the Seller shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the Seller's control, including but not limited to Acts of God, war, civil disturbance, requisitioning, import or export regulations, strike, lock-out or trade dispute, difficulties in obtaining materials, breakdown of machinery, fire or accident. If any such event occurs the Seller may cancel or suspend this contract without incurring any liability for any loss or damage thereby occasioned.
- 21 NOTICE TO THIRD PARTIES**
- 21 The Seller undertakes and agrees to bring fully to the notice of all persons with whom it may deal the terms of the General Conditions and the Special Conditions.
- 22 GOVERNING LAW**
- 22 The contract shall be governed by and be interpreted in accordance with English Law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English Courts for the purpose of the contract.