

# CONDITIONS OF SALE

## 1 Interpretation

### 1.1 In these Conditions:

**"BUYER"** means the person who accepts a quotation or other proposal of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller,

**"GOODS"** means the goods (including any instalment of the goods or any part for them) which the Seller is to supply in accordance with these Conditions,

**"SELLER"** means A. P. Haslam Limited having its registered office at 18 - 20 Merville Road, Co. Dublin, Ireland.

**"CONDITIONS"** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller,

**"CONTRACT"** means the contract for the purchase and sale of the Goods,

**"WRITING"** includes telex, cable, facsimile transmission and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 Basis of the Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation or order is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 Orders and Specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller 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 or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Seller 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 in full against all loss (including loss of profit), cost, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4 Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from Ireland, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only after which time (unless they have been accepted by the Buyer within that time) they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## 5 Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the last day of the month in which the Seller issued its invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding and purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above one month Dublin inter bank rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6 Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to the entrance to that place. Off loading the Goods from the Seller's vehicle shall, where possible, be carried out by the Seller but, where the Seller requires assistance from the Buyer in this regard, (which the Seller shall be entitled to request at its discretion) such assistance in whatever form, with or without equipment and whether or not the buyer shall have nominated the individual or the equipment concerned, shall be provided by the Buyer at its own risk insofar as any damage or loss maybe caused or occasioned to the Goods and/or to the Buyer or its equipment and or its servants or agents and it is hereby agreed that the Buyer shall not be or be deemed to be the Seller's agent for the purpose of the provision of such assistance.
- 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 howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing
- 6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller, whilst using all reasonable endeavours to deliver an accurate quantity of goods, reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity stated on the packing without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 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 Conditions 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.
- 6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the lesser of either the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods or the price of the Goods.

## 7 Risk and Retention of Title

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of all sums due by the Buyer to the Seller for the Goods and on any account whatsoever.
- 7.3 Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

- 7.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business. The Buyer shall hold the proceeds of sale (and / or the proceeds of any insurance where appropriate) of any Goods upon trust for the Seller as to the proportion thereof representing the price and shall account to the Seller for same. The Buyer shall hold all such monies in a separate bank account pending payment to the Seller and shall at all times keep these moneys separate from any moneys or property of the Buyer or third parties.
- 7.5 Until such time as the property in the Goods passes to the Buyer, (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require delivery of the Goods to the Seller failing which, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to the foregoing prohibition and to any other right or remedy of the Seller) forthwith become due and payable.
- 7.7 If the Goods are incorporated with or into any other product(s) owned solely or partly by the buyer or by one or more third parties ("the part owner (s)") then the said product (s) shall be deemed to be owned by the Seller and the part owner (s) as tenants in common in accordance with their respective entitlements, and the Buyer shall account to the Seller for that portion of the sale proceeds as represents the Seller's share and in accordance with the provisions of clause 7.4 hereof.
- 7.8 All payments made by a Buyer in relation to a sale of Goods shall be allocated in a manner directed by the Seller at the time of payment. If no specific allocation is made, the Seller shall have absolute discretion as to how such payments shall be allocated in discharge of the price of the Goods sold. The Seller's right of allocation need not be exercised as of the date of payment of any monies but may be exercised at any time the Seller chooses to exercise that right.

#### 8 Warranties and Exclusion of Liability

**This clause should be read carefully, it limits the extent of the sellers liability in contract, Tort and otherwise to the buyer**

- 8.1 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer within the meaning of the Sale of Goods Acts 1893 - 1980 (as amended) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 8.3 The above warranty is given by the Seller subject to the following conditions:
- 8.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.3.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and subject only to the provisions of clause 8.6 below the Seller shall have no further liability to the Buyer.
- 8.6 The Seller shall, subject to the normal rules concerning causation and remoteness of damage (except where the Goods are manufactured and/or any process is applied to the Goods in accordance with the Buyer's specifications) be responsible for liability for death or personal injury caused directly by the use of the Goods as a result of the Seller's negligence provided that the Seller's liability under this clause 8.6 shall not exceed €100,000.00.
- 8.7 Save as hereinbefore provided, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss or damage, costs, expenses whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

- 8.8 The liability accepted by the Seller under Clause 6.5 above and under this Clause 8 is the absolute limit of the Seller's liability and all other liabilities are hereby expressly excluded and in particular, but without prejudice to the generality of the foregoing, the Seller will not be liable to the Buyer for any consequential loss, damage, costs and expenses of any nature whatsoever incurred or suffered by the Buyer or by a third party including without limitation any economic or other loss of turnover profits, business or goodwill.
- 8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 8.10 The Buyer is reminded of the limitation of the Seller's liability contained in clause 6.5 above.**

#### 9 Insolvency

- 9.1 This clause applies if:
- 9.1.1 the Buyer makes any voluntary arrangements with its creditors or seeks the protection of the Court or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price, and any other sums due by the Buyer to the Seller shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### 10 Export Terms

- 10.1 In these conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2 Where the Goods are supplied for export from Ireland the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 10.3 The Buyer shall be responsible for obtaining any required permits or licences and for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties, charges, licence fees, costs and charges thereon.
- 10.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered F.O.B. by the Seller to the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1893.
- 10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 10.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 30 days after sight to the order of the Seller at such bank in Ireland as may be specified in the bill of exchange.

#### 11 General

- 11.1 If the Seller is a member of a group of companies with a holding company, the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act of omission of the Seller.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.3 No waiver by the Seller of any breach of Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Incorporated Law Society of Ireland and the Arbitration Acts 1954 to 1980 shall apply.
- 11.6 The Contract shall be governed by the laws of the Republic of Ireland and the Buyer hereby submits to the jurisdiction of the Irish Courts.

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