

Richard Baker Harrison LTD

CONDITIONS OF BUSINESS

1. Interpretation

- 1.1. In these Conditions:
'Buyer' means the person whose order for the Goods is accepted by RBH.
'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 RBH;
'Contract' means the contract for the purchase and sale of the Goods;
'Seller' means the persons so described in the Order.
'Goods' means the goods (including any instalment of the goods) which RBH is to supply in accordance with these Conditions;
'RBH' means Richard Baker Harrison Ltd (company no. 00211972).
- 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. RBH shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by RBH, 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 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 representative of the Buyer and a director of RBH.
- 2.3. RBH's employees or agents are not authorised to make any representations concerning the Goods or their storage, application or use unless confirmed by RBH in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, and RBH shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4. 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 RBH shall be subject to correction without any liability on the part of RBH.

3. Orders and specifications

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by RBH unless and until confirmed in writing by RBH's authorised representative.
- 3.2. The Buyer shall be responsible to RBH for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving RBH any necessary information relating to the Goods within a sufficient time to enable RBH to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in RBH's order acknowledgement which shall be deemed to incorporate all relevant product data sheets provided by RBH. These product data sheets specify the relevant tolerances and limits for the Goods. A certificate of analysis can be forwarded to the Buyer if required.
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by RBH in accordance with a specification submitted by the Buyer, the Buyer shall indemnify RBH against all loss, damages, costs and expenses awarded against or incurred by RBH in connection with or paid or agreed to be paid by RBH in settlement of any claim for infringement of any industrial or intellectual property rights whatsoever of any other person which results from RBH's use of the Buyer's specification.
- 3.5. RBH reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to RBH's specification, which do not detrimentally affect their quality or performance.
- 3.6. No order which has been accepted by RBH may be cancelled by the Buyer except with the agreement in writing of RBH and on terms that the Buyer shall indemnify RBH in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by RBH as a result of cancellation.

4. Price of the Goods

- 4.1. The price of the Goods shall be RBH's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in RBH's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, RBH's relevant published export price list shall apply. Unless otherwise specified in writing by RBH all prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by RBH without giving notice to the Buyer.
- 4.2. RBH 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 RBH which is due to any factor beyond the control of RBH (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 RBH adequate information or instructions.
- 4.3. Unless otherwise agreed in writing between the Buyer and RBH, all prices are given by RBH on an ex-works basis, and where RBH agrees to deliver the Goods otherwise than on an ex-works basis, the Buyer shall be liable to pay RBH's charges for transport, any special packaging and insurance. RBH shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979 where applicable.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to RBH.

5. Terms of payment

- 5.1. Subject to any special terms agreed in writing between the Buyer and RBH, RBH shall be entitled to invoice the Buyer for the price of the Goods:
 - 5.1.1. on or at any time after delivery of the Goods where the Goods are delivered on an ex-works basis and the Buyer has been notified that the Goods are ready for collection; or
 - 5.1.2. where RBH agrees in writing to deliver the Goods otherwise than on an ex-works basis or to arrange delivery, upon despatch of the Goods from RBH's premises.
- 5.2. Unless otherwise agreed in writing the Buyer shall pay the price of the Goods without any other deduction not later than the 20th day of the month following invoicing, and RBH shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 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 RBH, RBH 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 RBH) as RBH may think fit (notwithstanding any 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 National Westminster Bank plc's base 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).
- 5.4. RBH reserves the right at any time at its discretion to demand security for payment before commencing or continuing with the Contract or delivering the Goods.
- 5.5. RBH reserves the right to exercise a lien over all or any goods of the Buyer in the possession of RBH whether or not due payment has been made for such goods (or work carried out on them) in respect of the unpaid price (together with VAT thereon where applicable) of any Goods or any other monies owing to RBH.

6. Delivery

- 6.1. Delivery of the Goods shall be made by RBH delivering the Goods to that place specified on the order acknowledgement form or by the Buyer collecting the Goods at RBH's premises at any time after RBH has notified the Buyer that the Goods are ready for collection. The Buyer shall be responsible 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 on them.
- 6.2. The Buyer shall be responsible for arranging for the inspection of the Goods at RBH's premises before shipment. RBH 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.
- 6.3. Any dates quoted for delivery of the Goods are approximate only and RBH shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by RBH in writing. The Goods may be delivered by RBH in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 6.4. Where delivery of the Goods is to be made by RBH in bulk, RBH reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.5. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by RBH 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.

7. Risk and property

- 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 RBH's premises, at the time when RBH 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 RBH's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when RBH has tendered delivery of the Goods.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until RBH has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by RBH to the Buyer for which payment is then due.
- 7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as RBH'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 RBH's property, but the Buyer may resell or use the Goods in the ordinary course of its business. RBH reserves the right to enter onto the Buyer's premises to ensure that this clause has been adhered to.
- 7.4. 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), RBH may at any time require the Buyer to deliver up the Goods to RBH and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5. 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 RBH, but if the Buyer does so all monies owing by the Buyer to RBH shall (without limiting any other right or remedy of RBH) forthwith become due and payable.
- 7.6. On the event of the Buyer's insolvency (the actual winding up or entering into administration of a company or the bankruptcy of a sole trader or petition for bankruptcy being issued) all monies shall forthwith become due and payable.

8. Warranties and liability

- 8.1. Subject to the conditions set out below RBH warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2. The above warranty is given by RBH subject to the following conditions:
 - 8.2.1. RBH shall be under no liability in respect of any defect in the Goods arising from any drawing, design, formulation or specification supplied by the Buyer;
 - 8.2.2. RBH shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working conditions, failure to follow RBH's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without RBH's approval including the use of reworked materials in the Buyer's manufacturing process;
 - 8.2.3. RBH 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;
 - 8.2.4. the above warranty does not extend to materials not manufactured by RBH, 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 RBH.
- 8.3. Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods shall (whether or not delivery is refused by the Buyer) be referred to RBH within 14 days from the date of delivery or where such defect was not apparent on reasonable inspection or in the event of any failure of the Goods to correspond with specification within 14 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify RBH accordingly, the Buyer shall not be entitled to reject the Goods and RBH 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 of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to RBH in accordance with these Conditions, RBH shall be entitled to replace the Goods free of charge or, at RBH's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but RBH shall have no further liability to the Buyer.
- 8.6. Except in respect of death or personal injury caused by RBH's negligence, RBH shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of RBH, 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, and the entire liability of RBH under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.7. RBH 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 RBH's obligations in relation to the Goods, if the delay or failure was due to any cause beyond RBH's reasonable control. Without prejudice to the generality of the foregoing, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of RBH or of a third party) and difficulties in obtaining raw materials, labour, fuel, parts or machinery shall be regarded as causes beyond RBH's reasonable control.

9. Insolvency of Buyer

- 9.1. This clause applies if:
 - 9.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or 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. RBH 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 RBH, RBH 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 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 context 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 the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and RBH) apply notwithstanding any other provision of these Conditions.

11. General

- 11.1. 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.
- 11.2. No waiver by RBH of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3. 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.
- 11.4. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.