1.0 DEFINITIONS

1.1 Business Day Means a day other than Saturday or Sunday on which Banks are open for ordinary banking business in London.

1.2 Buyer Means the person who buys or agrees to buy the Goods from the Seller.

1.3 Conditions Means the terms and conditions set out in this document and any special terms and conditions agreed in writing by the Seller.

1.4 Contract of Sale Means the Contract of Sale of The Goods consisting solely of the Order Acknowledgement, these Conditions and the Buyer's purchase order.

1.5 Consumer Means a person defined in Section 2 (3) of the Consumer Rights Act 2015.

1.6 Delivery date(s) Means the date(s) specified by the Seller on the Order Acknowledgement stating when the Goods are to be delivered to the Buyer.

1.7 Goods Means the goods that the Buyer agrees to buy from the Seller set out in these Conditions and the Buyer's purchase order.

1.8 Price(s) Means the price of the Goods, which may include transport, packing and insurance (but excluding VAT) as set out in the Order Acknowledgement, including any fluctuation in price advised by the Seller to the Buyer up to the completion of delivery of the Goods.

1.9 Order Acknowledgement Means a document setting out other things, the Goods, the Quantity of Goods, the Price and, if different to 3.0 of these conditions, the Payment Terms that are agreed between the Parties, subject to these Conditions of Sale. The order in this case means any order made by the Customer, verbally or in writing.

1.10 Seller Means Tremco Illbruck Limited.

1.11 The Parties Means the Buyer and the Seller.

2.0 CONDITIONS APPLICABLE

2.1 These Conditions shall apply to all Contracts for the Sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or confirmation order or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. Each Contract shall be concluded on the date that the Seller deposits in the post with pre-paid transit stamps, a copy of the invoice, or enters credentials, e-mail or hands to the Buyer his representative the Order Acknowledgment signed by the Seller whichever may be the earliest to occur.

2.3 In the event that no Order Acknowledgement has been received by the Buyer then the acceptance of delivery of the Goods by the Buyer shall be deemed conclusive evidence of the Buyer’s acceptance of these Conditions.

2.4 Any variation of the Conditions (including any special terms and conditions agreed between the Parties) shall be incapable unless agreed in writing by a director of Tremco Illbruck Limited.

2.5 In the event of any conflict between the content and interpretation of these Conditions of Sale and the Order Acknowledgement then the Order Acknowledgement will take precedence except in respect of Clause 6.3 of the Conditions of Sale, which is applicable to all Delivery Dates given by the Seller.

2.6 Any typographical, clerical or other error or omission in the Order Acknowledgement or any other document issued by the Seller shall be subject to the Seller's correction without any liability on the part of the Seller.

2.7(a) In the absence of particular wording on any drawings/Information supplied by the Buyer for the Seller’s use in the manufacture/supply of the Goods the Seller will be entitled to assume all dimensions given are accurate and meet the relevant RIBA or British Standard approved scale.

2.7(b) The Sellers proprietary Goods will be manufactured and supplied to the Seller’s specifications, dimensions, tolerances, finishes and quality stipulated in the Seller’s Technical Literature and/or specific Order Acknowledgment current at the date of manufacture of the Goods.

2.8 Exact colour match for Goods supplied is not guaranteed.

2.9 The Goods supplied by the Seller must be stored, protected and maintained by the Buyer strictly in accordance with the Manufacturers’ instructions and used within any period of shelf life advised and any instructions/advice agreed with the Goods, the Buyer must seek same from the Seller to ensure satisfactory storage, protection, maintenance and use of the Goods. The Buyer’s failure to store, protect, maintain and use the goods as recommended by the Seller or the goods are not stored in accordance with the advice given will be to the detriment of any damage to the Goods arising from such failure. This is subject to Clause 5.0.

2.10(a) Where the Goods are manufactured by the Seller the Seller’s sole liability for the Goods is limited to the replacement of the Goods;

(b) Where the Goods are manufactured by someone other than the Seller then the Seller’s sole liability for the Goods is limited to that liability which the Manufacturer or Supplier has to the Specification of the Goods, scarcity of supply, monetary exchange rates, taxes, duties, the cost of labour and/or materials and any other manufacturing costs incurred by the Seller.

2.11 In the event that delivery of the Goods is delayed by the Buyer, for whatever reason, after the Goods or any part thereof have been manufactured then the Buyer will pay the full value of the Goods manufactured and any associated storage charges for the goods whilst stored as notified by the Seller to the Buyer. Payment in accordance with Clause 3.0 of these Conditions of Sale shall apply.

2.12 Without prejudice to its rights and without incurring any obligation The Seller will endeavour to accommodate amendments made by the Buyer to the information detailed in the Order Acknowledgement provided that it is notified in writing by the Buyer, at least five Business Days prior to the scheduled date of manufacture of the Goods. Any revised Delivery Date arising by reason of such an accommodation will be notified to the Buyer but the Seller shall not incur any liability for delivery thereof. The Buyer may not request the Seller to reimburse the Seller for all costs and expenses whatsoever arising by reason of the said amendments and payment shall be made in accordance with Clause 3.0 of these Conditions of Sale.

2.13 Quotations issued by the Company are invitations to treat only not offers.

3.0 PAYMENT

3.1 Prices set out in any quotation issued by the Seller and/or the Order Acknowledgement are subject to fluctuation. The Seller reserves the right to vary the price of the Goods at any time until delivery is completed and the Buyer agrees to pay any variation in the Price, together with VAT, if such variation is due to factors occurring after the making of the Contract, which are beyond the reasonable control of the Seller (including, without limitation, any change in specification of the Goods, scarcity of supply, monetary exchange rates, taxes, duties, the cost of labour and/or materials and any other manufacturing costs incurred by the Seller).

3.2 In case of an order for delivery or performance by instalments, the price payable for each instalment will be the price current at the date of despatch or performance of each instalment.

3.3 Any occasion is at prices applicable to the quantities specified – in the event of the whole order quoted not being placed the Company reserves the right to revise any prices in respect of the quantities actually supplied.

3.4 Any variations are exclusive of all carriage and carriage costs unless otherwise stated.

3.5 Payment of the Price together with VAT shall be paid within 30 days net monthly of the Sellers Invoice unless otherwise agreed in writing with the Seller. Time for payment of the said invoice shall be of the essence.

3.6 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them.

3.7 If the Buyer fails to make payment within 30 days net monthly of the Seller’s Invoice then without prejudice to any of the Seller’s other rights the Seller may then –

3.7.1 CANCEL THE CONTRACT;

3.7.2 Appropriate any payments made by the Buyer to such Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.

3.8 The Buyer may not sub-contract the Price (including any packing and insurance payable) any amount due from the Seller whether under the application of the contract of sale or otherwise.

3.9 The Seller shall be entitled to invoice the Buyer for the Price or any part thereof, together with any VAT applicable for or any additional costs or expenses incurred by The Seller in its performance of the Contract of Sale at any time after the Order Acknowledgement(s) have been delivered to the Buyer and whether or not the Goods or any part thereof have been delivered.

3.10 If the Buyer fails to make payment to the Seller in accordance with Clause 3.2 then the Seller shall be entitled to claim interest and compensation pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

3.11 We do not accept payment in cash or by cheque.

4.0 DESCRIPTION AND SPECIFICATIONS

4.1 In the case of the Buyer not being a Consumer, the Seller reserves the right to supply the Goods with changes in the specification or description or sample provided. However, the Seller shall only change the sample, specification or description in contract not involving a Consumer when such change is required because of a change by the Seller’s supplier at any time or other factors outside the Seller’s reasonable control.

4.2 Illustrations and information in correspondence, catalogues, price lists, datasheets, specifications and advertising matter are only an indication of the type of Goods offered and normal terms or other particular conditions therein shall be binding on the Seller.

4.3 Any recommendation or suggestion relating to the use for the Goods made by Tremco Illbruck Limited, whether in its technical literature, or in response to a specific enquiry, or otherwise, is based upon data believed to be reliable, however the Goods and information are intended for use by Buyer having requisite skill and know-how in the industry and therefore it is for the Buyer to satisfy itself of the suitability of the Goods for its own particular purpose and it shall be deemed that the Buyer has done so at its sole discretion and risk.

4.4 The technical data sheets supplied by the Seller for each individual product shall form part of the Contract.

4.5 Variations caused by environmental changes, changes in procedure of use or the extrapolation of data may affect the Goods and the Seller will have no liability in respect of the same.

5.0 WARRANTIES AND LIABILITY

5.1 Except where the Buyer is dealing as a Consumer all warranties, conditions or terms relating to fitness for purpose or satisfactory quality where implied by statute or common law or otherwise are excluded.

5.2 Except in respect of death or personal injury caused by the Seller’s negligence the Seller shall not be liable to the Buyer for any loss direct or consequential of whatever nature resulting from any breach of duty of the Seller either at common law or under statute including any representations inducing the Buyer to enter into this contract.

6.0 DELIVERY

6.1 The date of delivery of the Goods is when either:-

6.1.1 The Buyer collects them from the Delivery Point following the Seller’s notification that they are ready for collection; or

6.1.2 an Alternative delivery date has been agreed by the Seller, the date that the Goods are delivered to that place. If the Buyer requests changes to the Delivery Point, the Buyer shall be liable for any changes made by the Seller or any additional costs or expenses incurred by the Seller as a result of that change.

6.2 The Seller may at its discretion deliver the Goods by instalments.

6.3 The Delivery Date and any other time or date which the Seller gives for delivery of the Goods or any instalment is an estimate only. The Buyer will not be entitled to terminate the Contract as a whole if the Seller fails to meet any given times or dates for delivery unless such a delay exceeds 40 working days. Under this Contract, time is not of the essence in respect of Delivery Dates.

6.4 Where delivery is made by instalments, each instalment is to be deemed a separate contract and any delay, default or non-delivery of any one instalment shall not entitle the Buyer to cancel the remainder of the Contract.

6.5 If:

(i) the Buyer fails or refuse to accept delivery;

(ii) the Buyer does not give delivery instructions when placing its order for goods;

(iii) delivery is delayed by the Buyer;

(iv) suitable unloading facilities are not available for the delivery of the Goods to be unloaded then the Buyer will be responsible for paying or reimbursing the Seller any additional costs or charges which it incurs as a result of the Buyer’s aforementioned actions.

6.6 The Buyer must notify the Seller in writing if a delivery is not received within two (2) working days from the date the Seller informed the Buyer that it had been despatched.

6.7 Unless the Seller agrees otherwise, the Buyer will provide the Goods to be safely and properly unloaded.

(i) at the Buyer’s cost

(ii) under the Buyer’s control

(iii) at the Buyer’s sole risk

6.8 The Buyer shall indemnify the Seller against any claims arising from any unloading except to the extent that any such claims relate to personal injury, death or damage to property which is caused by the negligence of the Seller’s employees or agents.

6.9 The Seller shall not fail or refuse to deliver any Goods on the grounds that the quantity is below the quantity ordered.

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Continued on next page...
11. INSOLVENCY OR DEFAULT OF THE BUYER

11.1 If the Buyer shall make default in or commit any breach of contract with the Seller or if any arrest or execution shall be levied on the Buyer’s property or assets or if the Buyer shall (in the case of an individual) be declared by a court of competent jurisdiction mad bankrupt, become subject to the composition for the benefit of his creditors, or be made bankrupt or make any application to Court for protection; or (in the case of a limited company) shall pass any resolution to wind up the company (other than a resolution for the purpose of solvent amalgamation or reconstruction) or shall be wound up by a creditor or make any application to the Court for relief against creditors or have a Receiver or Administrative Receiver appointed over the company’s undertaking, property or assets then the Seller shall have the right forthwith by notice in writing to determine any contract then subsisting without prejudice to any claim or other right the Seller may have against the Buyer.

12. PROPER LAW OF CONTRACT

12.1 This contract is subject to the laws of England and Wales.

12.2 All disputes arising out of this Contract of Sale shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

13. GENERAL LIABILITY

13.1 Save as provided in these Conditions and unless otherwise confirmed in writing and signed by a Director of the Seller no liability is accepted for the accuracy of any opinions, advice, recommendation, text, drawing, specification, performance figures or other data or information communicated by the Seller to the Buyer or third parties.

13.2 Without prejudice to the generality of the foregoing the Buyer accepts and warrants that they have not been induced to enter the contract by any representation made by or on behalf of the Seller.

13.3 If the Buyer has complied with the claims procedure set out in Clause 9 and has given the Seller reasonable opportunity to inspect the Goods the Seller may at its option repair or replace (within such time as the Seller may require) Goods which have proved defective (the opinion of the Seller being final and conclusive for this purpose) in normal use or refund the price thereof provided always that:

i) such defects arose solely from faulty design materials or workmanship by the Seller; and

ii) the defective Goods have either been promptly returned to or inspected by the Seller in accordance with Clause 7;

13.4 The Seller’s responsibilities above shall cease if any repair is made or attempted to be made otherwise than by the Seller or with the Seller’s express written consent

13.5 The Seller will compensate the Buyer for direct damage to the Buyer’s own property caused by the breach of Contract of the Seller’’s wrongful act or omission of the Seller, its servants or agents for whose acts or omissions the Seller is liable at law provided that the Seller’s total liability in respect of each contract shall not exceed the Contract Price for the Goods supplied and the Seller shall not be liable to the Buyer for any consequential loss or damage (as hereinafter defined) for or any claims against the Seller by any other party.

13.6 Save as herebefore provided the Seller will not in any circumstances be liable for any loss or damage howsoever arising whether direct, indirect or consequential including but without prejudice to the foregoing due to:

i) the unsuitability of the Goods for any purpose to which they are put by the Buyer;

ii) the acts or omissions of the Seller, its servants, agents, contractors or sub-contractors; and

iii) the Seller’s breach of contract.

13.7 For the avoidance of doubt “consequential” loss or damage includes but is not limited to loss of market, loss of profit, additional haulage or shipping costs and the cost of repairing the Goods and of effecting any replacement of the Goods more extensive than that set out above.

13.8 The Buyer waives that these Conditions are freely accepted on its part in the knowledge and on the basis that: the Contract Price would be higher were the Seller under any liability other than that set out in these Conditions.

14. TRADEMARKS

14.1 The Buyer undertakes to respect all trademarks of the Seller and in particular where any such trademark is on Goods supplied, the Buyer undertakes:

i) Not to alter, remove or obliterate trademarks either partly or wholly;

ii) Not to apply any other trademark to the Goods;

iii) Not to apply to the Goods any other matter in writing that is likely to interfere with the reputation of the trademark.

15. MISCELLANEOUS

15.1 All headings are for ease of reference only and shall not affect the construction of this contract.

15.2 All references to the masculine shall include the feminine and neuter and vice versa and all references to the singular shall include the plural and vice versa.

15.3 Any notice required to be given under these Conditions shall be in writing addressed to the party at its registered office of principal place of business or such other address as may have been notified to the other party and shall be deemed to have been served in the case of by post, two days after it has been delivered in the post with pre-paid first class postage or in the case of facsimile or electronic transmission the date upon which it is sent provided it is transmitted before 4:00pm on a working day Monday to Friday, or in the case of personal delivery, the date, it is actually handed to the Buyer or his representative.

15.4 No waiver by the Seller of any breach of a term of this contract by the Buyer shall be deemed to be a waiver of any breach of the same or any other provision.

15.5 No person who is not a party to this Contract shall have any right under the Contract (Right of Third Parties) Act 1999 to enforce any term of this Contract.

15.6 If it is found that any condition/conditions of this Contract of Sale is not legally enforceable then the unenforceable condition/conditions shall not in any way affect the applicability of the remaining conditions of this Contract of Sale.

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