



ULVA Insulation Systems Limited – Conditions of Sale 2018

The Contract

1. In these Conditions:
 - 1.1. "the Company" means ULVA Insulation Systems Limited;
 - 1.2. "the Customer" means the customer of the Company;
 - 1.3. "Contract" means any contract entered into for the supply of Goods by the Company to the Customer; and
 - 1.4. "Goods" means any goods forming the subject matter of any Contract including (where the context so admits) services and any goods belonging to the Customer in relation to which the Company performs any services.
2. Any quotation is for commercial discussion and negotiation only, may be withdrawn at any time and in any event shall be deemed to have been withdrawn after 90 days from the date of the quotation.
3. These Conditions shall be incorporated in the Contract in second priority to any project-specific and/or individually negotiated terms or conditions elsewhere referred to in the Contract and in supersession of any previous conditions of sale of the Company. Acceptance by or on behalf of the Customer of any delivery or performance by the Company shall (subject to the foregoing) be conclusive evidence of the Customer's acceptance of these Conditions.
4. Any Contract supersedes any previous understandings or representations by the Company or the Customer in relation to its subject matter and not referred to in any written acknowledgement by the Company of the Customer's order.
5. The Company does not authorise the making of representations on its behalf by any person or third party unless confirmed in writing by a director or the company secretary of the Company.
6. No amendment of any Contract or these Conditions shall bind the Company unless made in writing by a director or the company secretary of the Company. Neither the amendment of any Contract nor the exercise of any rights under any Contract shall require the consent of any third party.
7. Any inconsistency or ambiguity within the Sub-Contract Documents shall be resolved at the Company's sole and absolute discretion.
8. Any Contract sets out all of the Customer's rights and remedies in relation to the Goods and performance by the Company and to the maximum extent permitted by law the Customer shall not have any other rights or remedies against the Company.

Prices

9. The Company's prices are stated exclusive of VAT and any other applicable taxes or duties of whatever kind and unless otherwise agreed in writing by the Company are those ruling at the date of despatch of the Goods *ex* the Company's works exclusive of carriage, insurance and packing.
10. The Company may at its sole discretion:
 - 10.1. Without notice vary any prices stated by it to allow for costs incurred by the Company after the date of the Contract as a result of (a) any alterations in specifications or quantities or production, delivery or performance schedules (b) any suspension of work requested by the Customer (c) any delay in issue by or on behalf of the Customer of any instructions, data or materials (including "free issue" items) (d) any inaccuracy, insufficiency or defect therein or non-conformity to specification (whether or not apparent on inspection) and (e) any fluctuation in the costs of materials, equipment, labour, transport or utilities, in each case arising from whatever cause; and
 - 10.2. On reasonable notice vary any prices stated by it for any other reason.

Payment

11. Unless otherwise agreed in writing, all amounts payable to the Company shall be paid:
 - 11.1. In the currency of the Great British Pound;
 - 11.2. Upon the Company issuing a *pro forma* invoice and prior to (and as a precondition to) the Goods leaving the premises of the Company; and
 - 11.3. Without any discount, set-off, abatement or other deduction whatsoever. No dispute arising under the Contract or otherwise shall affect the Company's right to full and prompt payment in accordance with the Contract.
12. Without prejudice to any other rights and remedies of the Company, interest shall be payable on any overdue amount:
 - 12.1. From the date on which payment was due to the date on which it is made (whether before or after judgment);
 - 12.2. Accruing on a daily basis at the rate of five (5) per cent per annum over Bank of England base rate; and
 - 12.3. Compounded calendar monthly on the first day of each calendar month.
13. The Customer shall indemnify the Company in respect of any legal or other costs incurred by the Company in claiming any amounts from the Customer and recovering and dealing with any Goods to which the Company is entitled.
14. The Company may apportion payments received at its sole and absolute discretion.
15. Without prejudice to any other rights and remedies and notwithstanding any other agreement or arrangement with the Customer, the Company may at any time by written notice require the Customer to tender full payment for the Goods (or provide security acceptable to the Company including without limitation by irrevocable letter of credit from a bank carrying on business in the United Kingdom) and the Company may refrain from delivering the Goods until the Customer has done so.
16. If (a) the Customer fails to make any payment as and when due (b) any circumstances arise which entitle the Company to terminate the Contract or (c) if the Customer exceeds any financial credit limit set by the Company, the price of all Goods prepared and/or delivered pursuant to the Contract shall thereupon become payable.
17. Any payment due from the Customer to the Company shall be recoverable by the Company from the Customer as a debt.

Delivery and Risk

18. Goods shall be delivered and risk in them shall pass to the Customer when they are made available at the Company's premises or other place stated in the Contract or notified to the Customer by the Company.
19. Where Goods are to be made available at a place other than the Company's premises, the Company may deliver the Goods to the nearest location with suitable access and the Customer shall be responsible for all off-loading.

20. If Goods are consigned to a destination outside the United Kingdom mainland, to the extent consistent with these Conditions and save if and to the extent that the Contract otherwise provides the edition of "Incoterms EXW" then current shall apply.
21. Times quoted for delivery are subject to the reasonable availability of materials and the supply of all instructions or other matters required by the Customer. While the Company will reasonably endeavour to observe any time quoted for delivery:
 - 21.1. The Company shall not be liable for any loss, damage or expense arising from any delay in delivery or performance from any cause whatsoever; and
 - 21.2. No delay in delivery or performance shall entitle the Customer to refuse to accept any delivery or performance or to repudiate any Contract.
22. If the Customer fails to take or accept delivery of any Goods or performance or to provide adequate delivery instructions or to collect Goods when notified of their readiness, the Company at its sole discretion may without prejudice to its other rights and remedies:
 - 22.1. Store the Goods at the risk of the Customer;
 - 22.2. Require the Customer to pay any storage, transportation, handling, insurance or other charges (including expenses in connection with the delay or detention of vehicles or the Goods) incurred by the Company; and/or
 - 22.3. Require the Customer to pay for the Goods as though delivery had taken place.
23. The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate Contract and, unless otherwise agreed in writing, no default by the Company in relation to any one or more instalments shall entitle the Customer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered Goods.
24. The Company may determine the form of transport or packing of any Goods the price for which includes carriage. The Company may charge extra for any special arrangements necessary or requested by the Customer.
25. Where Goods are not standard stock and are specifically manufactured for the Customer, the Company shall charge for and the Customer shall accept and pay for the such Goods based on Contract rates / prices and actual quantities delivered.

Title

26. Notwithstanding any earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer until the Company has received in cash or cleared funds all monies payable by the Customer to the Company under the Contract and otherwise.
 27. Until title passes to the Customer:
 - 27.1. The Customer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company and stored separately from other goods and materials;
 - 27.2. The Customer shall not charge the Goods or use them as any security; and
 - 27.3. The Company may at any time on demand:
 - 27.3.1. Enter any premises where the Goods are located for the purpose of inspecting and/or repossessing them; and
 - 27.3.2. Repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to sell or otherwise deal with them.
 28. The Company shall be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer.
 29. The Company transfers to the Customer only such title and rights of use as the Company has in any Goods (and in the case of any element provided by any third party, only such title and rights as that third party transferred to the Company).
 30. If at the time of collection or delivery any Goods are missing, lost, damaged, defective or otherwise not in accordance with the Contract the Company will, at its expense, subject to these conditions, in its discretion, within a reasonable period, replace the Goods affected at the original point of collection or delivery or otherwise make good the discrepancy or allow credit for their invoice value.
 31. The Company shall have no liability in respect of any such discrepancy unless the Customer has given the Company notice thereof:
 - 31.1. (in case of any discrepancy which is reasonably apparent on inspection) within three (3) days of receipt of the Goods; or
 - 31.2. (in case of loss of a whole consignment) within seven (7) days from the date of invoice; or
 - 31.3. (in case of a discrepancy which is not reasonably apparent on inspection) immediately upon the discrepancy becoming apparent and in any event not later than three (3) months after receipt of the Goods.
 32. The Company shall have no liability in respect of any defect in the Goods alleged by the Customer unless:
 - 32.1. Notice of the claim is given in writing;
 - 32.2. The Customer affords the Company reasonable opportunity and facilities for the investigation of any claim and complies with any request by the Company for the return, properly packed and carriage paid, of any Goods for examination by the Company; and
 - 32.3. The Company is given adequate opportunity to investigate any claim (in the case of any alleged defect which is reasonably apparent on inspection) within a period of not less than three (3) days from the date on which notice of the claim is given and before the Goods are used or re-sold.
 33. No Goods may be returned unless the Company has requested their return in writing, in which case their return shall be arranged by the Customer and at the Customer's expense.
 34. In the case of any Goods not of the Company's manufacture which are alleged to be defective, the Company's liability shall be satisfied by the assignment to the Customer of the benefit of any warranty or guarantee or similar given by the manufacturer of the Goods.
 35. The Company shall have no liability for:
 - 35.1. Any loss of or damage to any Goods after despatch from the Company's premises or (if agreed) any later time of delivery prior to which the Company agrees to retain liability save that the Company will take such steps as the Customer reasonably requests for a claim to be made against any carrier and any proceeds of claim which the Company receives will less the Company's reasonable expenses be accounted for to the Customer;
 - 35.2. Any Goods which after delivery have been wrongly handled or stored, misused, neglected, subject to accidental damage, or subject to modification, repair or remedial work carried out by any person not authorised by the Company or not in accordance with its written recommendations or instructions;
 - 35.3. Any defect arising from the supply of inaccurate or incomplete information, details or materials by or on behalf of the Customer;
 - 35.4. The costs of the removal of any Goods to be replaced or parts thereof;

- 35.5. The costs of the refitting of any repaired or replaced Goods or parts thereof; and
- 35.6. Any defect in the Goods or any replacement Goods which appears after the claims period applicable to the original Goods has expired.
36. Any items replaced by the Company following its acceptance of any claim shall become the Company's property and shall not be used or disposed of except in accordance with the Company's written instructions.
37. Goods in respect of which no claim is made in accordance with these Conditions shall be deemed to have been accepted by the Customer and to be in accordance with the Contract. The Company may charge the Customer any administration, handling or other costs that it incurs in connection with any claim made other than in accordance with these Conditions.
38. These Conditions shall apply (so far as they are capable of application thereto) to any services performed by the Company which did not conform to their Contract description or were not carried out with reasonable skill and care.

Extent of Liability

39. Except to the extent stated in these Conditions or otherwise agreed in writing by the Company and to the maximum extent permitted by law:
- 39.1. The Company has no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise and howsoever arising under or in connection with the Contract other than for death or personal injury resulting from its negligence or for fraud by any employee acting in the course of his/her employment; and
- 39.2. The Company's sole liability for the non-compliance of any Goods with the Contract shall be to repair or (at the Company's discretion) replace the Goods and in no circumstances shall the Company be liable for any consequential loss or damage suffered by the Customer under or in connection with the Contract whether directly or indirectly and including (but not limited to) wasted time or expenditure, loss of profits, loss of production, loss of business revenue, loss of expected savings, loss of goodwill or any claim against the Customer by any person (and the Customer shall be solely responsible for any such losses or claims).
40. Save for death or personal injury caused or contributed to by negligence for which the Company is liable, the Company shall be discharged of all liability to which these Conditions apply unless proceedings are commenced within twelve (12) months of when the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
41. Save for death or personal injury caused or contributed to by negligence for which the Company is liable, the Company's liability in connection with the Goods shall in no circumstances exceed their invoice price.

Termination or Suspension

42. If the Customer fails to make any payment as and when due, defaults in any of its other obligations under the Contract or under any other agreement with the Company, is unable to pay its debts when due, has a receiver, manager, administrator, administrative receiver or liquidator (as the case may be) appointed for all or any part of its undertaking, assets or income, resolves to wind up, has a petition presented to any court for an administration order or for its winding up, is the subject of any winding up order, enters into any composition or arrangement with its creditors (whether formal or informal), has any distrain or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade, or if the Company *bona fide* considers that any of the foregoing matters is likely to occur, the Company may without prejudice to any other rights and remedies and at its sole discretion suspend or terminate its performance under the Contract or terminate the Contract.

Force Majeure

43. The Company shall not be liable for any delay or other default or non-performance under the Contract resulting from any cause beyond the Company's reasonable control and whether existing at the date of the Contract or arising thereafter. In the event of such delay or other default or non-performance, the Company may at its sole discretion render later and/or other performance or terminate the Contract.

Tests

44. The Company shall not be liable for any failure of any Goods on test or in use outside the Company's premises to meet any performance standards unless those standards are published by the Company in respect of the type of the Goods and/or the Company has specifically detailed those standards in the Contract and subject always to:
- 44.1. Any tolerances specified by the Company or agreed; and
- 44.2. Proof by the Customer that it has properly used the Goods in accordance with all instructions and conditions for use specified by the Company and all instructions of the manufacturer of any equipment in or with which the Goods are to be installed or used.
45. If any inspections or tests are to be conducted at the Company's premises and the Customer fails upon reasonable notice to attend the inspections or tests may take place in the Customer's absence and the Customer shall be deemed to have accepted their results.
46. If any inspections or tests are to be conducted at the Customer's premises and the Customer fails upon reasonable notice to carry out or permit to be carried out the tests or inspections or has commercially operated the Goods before the date for the inspections or tests, such inspections or tests shall be deemed to have been successfully carried out and to have demonstrated that the Goods comply with the Contract and are free from defects.

Miscellaneous

47. Cancellation of the Contract if requested by the Customer shall be at the Company's sole discretion and shall take effect only when the Company confirms the cancellation in writing and subject to any conditions that the Company may require.
48. The Customer, unless otherwise agreed in writing, is deemed to be acting as principal and not as an agent for any other party.
49. The Company may develop improve and refine its products and:
- 49.1. May agree with the Customer that an equal or better specification shall apply to the Goods; and
- 49.2. May in respect of any future contract or goods offer only an equal or better specification of goods.
50. The Company shall have no liability for any advice, opinion, representation or information furnished by the Company, its servants or agents unless given in writing by a person whose authority to do so has in response to a written request by the Customer referring to the Contract been confirmed in writing by a director or the

company secretary of the Company.

51. Where the Company prepares drawings, designs or other data on the basis of materials or instructions provided by the Customer, all rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared by the Company shall, unless otherwise agreed in writing, remain the Company's property and the Customer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.
52. The Customer shall indemnify and hold harmless the Company against any and all claims, proceedings, costs (including without limitation legal and professional costs), damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, goods, services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same or from any infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trade mark, copyright, design right, breach of confidence or otherwise and howsoever resulting from the Company's use of any of the foregoing. The Company shall not be liable for any inaccuracy or inadequacy of such items and the Customer shall be liable for any costs incurred by the Company resulting therefrom.
53. The Company may at its sole discretion sub-contract all or any of its obligations under the Contract and may assign the benefit of or its rights under the Contract.
54. The Customer may not without the Company's prior written consent assign the benefit of or its rights under the Contract.
55. The Company shall have a lien on any Goods and documents in the Company's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of the same until full payment is made. The Company may at its sole discretion on not less than twenty eight (28) days' notice to the Customer sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of sums due from the Customer to the Company.
56. The Customer shall be responsible for obtaining and maintaining in force any import or export licences, visas, work permits or the like and the payment of any duties taxes or other charges in connection with the employment overseas of any of the Company's personnel. The Customer indemnifies the Company in respect of any costs incurred by the Company as a result of any breach of this clause by the Customer.
57. The subject matter of the Contract and any technical information supplied thereunder is confidential and may contain trade secrets. The Customer shall treat all information received by it from the Company as confidential and not disclose the same to any third party save (a) With the Company's prior written consent (b) as required by law and (c) if the information is already in the public domain other than by breach of this clause by the Customer. The Customer agrees that a monetary award may not adequately compensate the Company for any breach of this clause and will not object to the Company claiming injunctive relief for any breach of this clause.
58. Any notice given in writing shall:
- 58.1. If sent by prepaid letter post to the receiving party at its business address last notified in writing to the other party be deemed to have been given 2 working days following the date of posting if posted in the United Kingdom to an address in the United Kingdom and 4 working days following the date of posting if posted from or to an address outside the United Kingdom; and
- 58.2. If given by email to the receiving party at any email address for the receiving party stated in the Contract or otherwise provided by the receiving party be deemed to have been given 24 hours after the time of the email being sent.

Law, jurisdiction and construction

59. The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract save that, for the sole benefit of the Company, the Company shall be entitled to issue proceedings in order to claim any remedy or to enforce any right in any other Country having competent jurisdiction to hear any dispute and in the case of Goods supplied outside the United Kingdom, the limits on the extent to which liability can be excluded under the Unfair Contract Terms Act 1977 shall not apply.
60. Headings in these Conditions are for convenience only and shall not affect their interpretation.
61. Should any part of the Contract be found to be illegal, unenforceable or otherwise invalid, that part of the Contract shall be treated as having been deleted from the remaining parts of the Contract and the remaining parts of the Contract shall remain of full force and effect.
62. The limitations and exclusions of liability in these Conditions shall be interpreted as applying to the maximum extent permitted by law and shall if necessary shall be construed with such amendments as may be required to give them lawful effect.
63. The Contract is not intended to and does not confer any rights on any third party.
64. Delay by the Company in exercising any of its rights under the Contract shall not be (or be treated as being) any waiver of those rights by the Company, and failure by the Company to exercise any of its rights on any given occasion shall not prevent the Company from exercising those or any other rights on any future occasion.
65. If the Customer is not domiciled in the United Kingdom, the Customer shall if so required by the Company instruct solicitors in London, England to accept service of legal documents on its behalf.