

AB LEWIS LTD Terms and Conditions of Sale

1. **DEFINITIONS**
- 1.1 In these Conditions:
 - 7.7 **Buyer** means the person to whom the Seller is to supply goods pursuant to a Contract;
 - 7.8 **Contract** means a contract for the sale of goods by the Seller to a Buyer that incorporates these Conditions;
 - 7.9 **Force Majeure Event** has the meaning given in Condition 13;
 - 7.10 **Goods** means the goods that the Seller supplies pursuant to a Contract; and
 - 7.11 **Seller** means AB Lewis Limited, a company incorporated in England and Wales (registered number: 05734540).
2. **APPLICATION**
- 2.1 These Conditions alone (as varied in accordance with Condition 2.3) shall govern and be incorporated in every contract for the sale of Goods made by or on behalf of the Seller with a Buyer. They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.
- 2.2 Acceptance by the Buyer of delivery of the Goods shall (without prejudice to Condition 3 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 2.3 A variation of these Conditions is valid only if it is in writing and signed by a director or authorised representative of the Seller.
3. **QUOTATIONS AND ACCEPTANCE**
- 3.1 A quotation by the Seller does not constitute an offer. The Buyer's order following receipt of a quotation shall be deemed to be an offer to the Seller and a Contract shall not exist until written acceptance of the Buyer's order in accordance with Condition 3.3.
- 3.2 Any quotation is valid for a period of 30 days unless otherwise stated by the Seller and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's order.
- 3.3 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions. The Seller's acceptance of the Buyer's order shall be effective only where it is in writing and signed by an authorised representative of the Seller.
4. **DESCRIPTION AND SPECIFICATION**
- 4.1 Any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director or authorised representative of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 4.2 All samples, drawings, designs, descriptive matter, specifications, particulars of weight and dimensions issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures shall not form part of the Contract and this is not a sale by sample.
- 4.3 All colour or size specification shall be subject to reasonable commercial variation by the Seller.
- 4.4 The Seller accepts no responsibility for any errors, omissions or other defects in any drawings, designs or specifications not prepared by the Seller. The Buyer shall indemnify the Seller against each loss, liability and cost which the Seller incurs arising from the same.
5. **PRICE**
- 5.1 The price for the Goods is specified on the Sellers acknowledgement of the order and includes the cost of the Goods including value added tax and any other tax or duty and all costs or charges in relation to demurrage, carriage, freight and insurance costs to the point of delivery.
- 5.2 The price for the Goods may be varied by the Seller after the Seller's acknowledgement of the order to cover any increases due to market conditions (including without limitation changes in foreign exchange rates, inflation, labour, materials, supply or transportation costs) and the increase or imposition of any tax, duty or other levy which affects the Seller up until the date of delivery.
- 5.3 Any increase in the price in accordance with Condition 5.2 shall be on the Buyer's account.
6. **TERMS OF PAYMENT**
- 6.1 Payment of the price for the Goods shall, unless otherwise agreed in writing, be of the essence and shall be paid in full within 30 days of the date of the Seller's invoice without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. The Seller reserves the right to suspend the provision of Goods to the Buyer where any amounts are overdue under any contract between the Seller and the Buyer until all such amounts have been paid in full.
- 6.2 The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
7. **DELIVERY**
- 7.1 Delivery or despatch dates mentioned in any quotation, order acceptance form or elsewhere are approximate only and not of any contractual effect. The Seller is not liable to the Buyer for failure to deliver on a particular date or dates. Time for delivery is not of the essence of a Contract and shall not be made so by service of any notice. If no delivery dates are specified, delivery shall be within a reasonable time.
- 7.2 Delivery shall be at the Seller's premises unless otherwise stipulated or agreed by the Seller in writing.
- 7.3 Subject to condition 7.2, the Buyer shall take delivery of the Goods within seven days of the Seller giving it notice that the Goods are ready for delivery unless otherwise agreed by the parties.
- 7.4 The Buyer is solely responsible for loading and/or unloading the Goods at the point of delivery. The Buyer shall indemnify the Seller against each loss, liability and cost arising as a result of the Seller or its subcontractors assisting the Buyer in the loading, unloading or other removal of the Goods from the point of delivery.
- 7.5 The Buyer shall be permitted to deliver in instalments unless agreed otherwise and each delivery shall be a separate contract.
- 7.6 Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect, special or consequential liabilities, losses, charges, damages, costs or expenses (including legal and other professional costs and out of pocket disbursements properly incurred) including, without limitation, pure economic loss, loss of profits, loss of business, loss of revenue, depletion of goodwill, loss of anticipated savings or loss of management time caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence) nor shall any delay entitle the Buyer to terminate or rescind a Contract unless such delay exceeds 180 days.
- 7.7 If for any reason the Buyer refuses or fails to take delivery of any of the Goods when they are ready for delivery the Seller is entitled to terminate the Contract with immediate effect, to dispose of the Goods as the Seller may determine and to recover from the Buyer any loss or additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).
- 7.8 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's premises shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 7.9 Section 32(2) of the Sale of Goods Act 1979 does not apply to a Contract.
8. **RISK**
- 8.1 If Goods are sold ex-warehouse of the Seller or ex-docks then the Goods are at the risk of the Buyer from the date that the Seller notifies the Buyer that the goods are ready for delivery. If Goods are delivered in any other specified way then risk shall pass to the buyer upon delivery.
- 8.2 From the time of delivery until ownership of the Goods passes to the Buyer in accordance with Condition 9, the Buyer shall insure the Goods against all risks for their full value with a reputable insurance office to the reasonable satisfaction of the Seller. Upon request, the Buyer shall use best endeavours to have the Seller's interest in the Goods noted on the insurance policy and shall produce the policy of insurance to the Seller. The Buyer shall hold the proceeds of any claim on the insurance policy on trust for the Seller and shall immediately account to the Seller with the proceeds.
9. **TITLE**
- 9.1 Notwithstanding delivery and passing of risk, ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds):
 - 9.1.1 the agreed price for the Goods (together with any accrued interest); and
 - 9.1.2 all other amounts owed by the Buyer to the Seller under any contract.
- 9.2 Until ownership of the Goods has passed to the Buyer, the Buyer is in possession of the Goods in a fiduciary capacity and shall:
 - 9.2.1 not part with possession of the Goods (otherwise than in accordance with Condition 9.4);
 - 9.2.2 keep the Goods free from any charge, lien or encumbrance and store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 9.2.3 maintain the Goods in satisfactory condition;
 - 9.2.4 give the Seller such information about the Goods as the Seller may from time to time require; and
 - 9.2.5 notify the Seller immediately if its financial standing be materially impaired.
- 9.3 The Seller reserves the right to repossess and resell any of the Goods to which it has retained title. Any right the Buyer may have to possession of the Goods shall in any event cease upon the Buyer's financial standing becoming materially impaired in the opinion of the Seller.
- 9.4 The Buyer grants to the Seller, its agents and employees an irrevocable right and licence to enter the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing Goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of a Contract and is without prejudice to any accrued rights of the Seller under a Contract or otherwise.
- 9.5 Whilst the Buyer is in possession of the Goods with the Seller's consent the Buyer may in the ordinary course of business sell the Goods before ownership of the Goods has passed to the Buyer provided that:
 - 9.5.1 the Buyer sells the Goods as principal and is not and shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person;
 - 9.5.2 the proceeds of sale owed by the Buyer to the Seller are held on trust for the Seller and does not mingle such proceeds with any other monies;
 - 9.6 Notwithstanding the provisions of this Condition 9, the Seller may bring an action against the Buyer for the price of the Goods in the event of non-payment by the Buyer by the due date.
 - 9.7 On termination of a Contract for any reason, the Seller's (but not the Buyer's) rights contained in this Condition 9 shall remain in effect.
10. **WARRANTY**
- 10.1 Goods are not tested or sold as fit for any particular purpose. Any term, warranty or condition express, implied or statutory to the contrary is excluded to the extent permitted by law. The Buyer must satisfy itself prior to entering into the Contract that the Goods purchased are satisfactory for its requirements as no cancellation will be accepted by the Seller except in accordance with these Conditions.
11. **LIABILITY**
- 11.1 The Seller is not liable to the Buyer for:
 - 11.1.1 non-delivery, delay or non-shipment which is beyond the Seller's complete control and the Buyer must accept goods pre-cut to the Buyers specifications; or
 - 11.1.2 shortages in quantity delivered unless the Buyer notifies the Seller of a claim and specifics of the shortages on the delivery note within 3 days of receipt of the Goods by the Buyer;
 - 11.1.3 damage to or loss of the Goods or any part of them in transit (where the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller) unless the Buyer notifies the Seller of a claim and the specifics of the damage on the delivery note upon delivery;
 - 11.1.4 defects in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the Buyer or of any third party; or
 - 11.1.5 other defects in the Goods unless notified to the Seller within 7 days of receipt of the Goods by the Buyer or if the defect would not have been apparent on reasonable inspection, within 21 days of receipt.
- 11.2 If liability is accepted by the Seller under Condition 11.1 the Seller's only obligation is at its option:
 - 11.2.1 to make good any shortage or non-delivery;
 - 11.2.2 to replace or repair any Goods found to be damaged or defective; or
 - 11.2.3 to refund to the Buyer the amount paid by the Buyer for the
- 11.3 Goods the subject of a claim under Condition 11.1.
- 11.4 Subject to clause 11.6 the Seller's aggregate liability to the Buyer under a Contract shall in no circumstance exceed the cost of the defective, damaged or undelivered Goods.
- 11.5 If and to the extent that any person who has supplied the Seller validly excludes, restricts or limits their liability in respect of the Goods or any direct or indirect losses that may be caused by the Goods then such exclusions, restrictions or limitations on liability shall be correspondingly passed on to the Buyer and the Seller will, upon request, provide the Buyer with details of any such exclusion, restriction or limitation.
- 11.6 The Seller is not liable to the Buyer for any indirect or consequential loss or damage resulting from the supply of the Goods including loss of profit, goodwill, revenue or business.
- 11.7 Nothing in these Conditions excludes or limits the Seller's liability for death or personal injury caused by the Seller's negligence or under Section 2(3) Consumer Protection Act 1987 or for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability under English law or for fraud or fraudulent misrepresentation.
- 11.8 In respect of consumer transactions only (as defined in the Consumer Transactions (Restrictions on Statements) Order 1976 as amended) nothing in these Conditions affects the statutory rights of a consumer.
12. **PROCESSING CONTRACTS**
- 12.1 If the Buyer wishes for the Goods to be processed then the Seller may instruct a third party to carry out such processing on the terms and conditions of that third party at the Buyer's cost.
- 12.2 It is a condition for the processing of Goods that the goods are accepted for processing at the Buyer's risk and that no warranty is expressly given or implied except that the processors will exercise reasonable care and skill and the processors, their servants or agents will not be liable for any loss, deterioration or damage arising from any cause whatever other than their own negligence and then subject to the claim being notified at the time of delivery to or collection of the goods by the Buyers, or at least, 3 days after receipt.
13. **FORCE MAJEURE**
- 13.1 The Seller reserves the right to defer the date of delivery, or to cancel the Contract without liability for any loss or damage suffered by the Buyer as a result of such delay or cancellation if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers sub-contractors or circumstances where obtaining or replacing resources of any kind due to a shortage in the market place is impossible impracticable notwithstanding the Seller using reasonable endeavours to obtain or replace such resources ("Force Majeure Event").
14. **TERMINATION**
- 14.1 If at any time the Seller deems the financial standing of the Buyer to be materially impaired or unsatisfactory the Seller may stop any Goods in transit, suspend further deliveries to the Buyer, exercise its rights under Condition 9 and terminate any Contract with the Buyer with immediate effect by written notice to the Buyer.
15. **ASSIGNMENT**
- 15.1 The Buyer may not assign or transfer or purport to assign or transfer any of its rights or obligations under a Contract without first having obtained the Seller's written consent. The Seller may assign a Contract or any part of it to any person.
16. **SEVERABILITY**
- 16.1 If any Condition of a Contract, (or part of a Condition), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal Condition of a Contract would be valid, enforceable or legal if some part of it were deleted, the Condition shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
17. **WAIVER**
- 17.1 The failure by the Seller to exercise or delay by the Seller in exercising any right, power or remedy provided by a Contract or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by a Contract shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
18. **NOTICES**
- 18.1 A notice under or in connection with a Contract shall be in writing and shall be delivered personally or sent by first class post to the other party at its registered office or principal place of business.
- 18.2 In the absence of evidence of earlier receipt, service of a notice is deemed to have been effected as follows: (i) if delivered personally, when left at the address referred to in Condition 18.1 (ii) if sent by post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting it (excluding the day of posting).
- 18.3 Notice by email shall not be valid notice under a Contract.
19. **THIRD PARTY RIGHTS**
- 19.1 Nothing in a Contract is intended to confer on any person any right to enforce any Condition of a Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
20. **REMEDIES**
- 20.1 Each right or remedy of the Seller under a Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
21. **GOVERNING LAW AND JURISDICTION**
- 21.1 A Contract is governed by, and shall be construed in accordance with, English law. The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with a Contract.

A copy of these Terms and Conditions in a larger font is available from the seller upon request.