

N. R. BURNETT LIMITED

CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions except where the context otherwise requires the following expressions have the following meanings:-

The Company means N. R. Burnett Limited

The Customer means the Company, person or firm dealing with the Company.

The Goods means the goods to be manufactured and/or supplied by the Company pursuant to the contract between the Company and the Customer including any substituted Goods pursuant to Clause 9 hereof

2. TERMS AND CONDITIONS

The Company will only contract to sell the goods to a Customer subject to these Conditions of Sale. Any order placed by a Customer shall be subject to these Conditions, and any conditions of purchase or other conditions whether of general application or otherwise of or purporting to be imposed by the Customer shall be of no effect notwithstanding that the same appear or purport to appear on any acceptance of any quotation/tender/offer by the Company. No addition to or variation or exclusion of the Company's conditions shall have any effect unless such addition, variation or exclusion shall be made in writing and signed by a Director of the Company and shall be stated to be made specifically in pursuance of this clause. For the avoidance of any doubt the Customer expressly acknowledges and accepts that the Company's Conditions and no others except as aforesaid shall be applicable to the contract, and acceptance of Goods by the Customer shall conclusively evidence acceptance of these conditions.

3. EXCLUSION

For the purpose of these conditions, the Company contracts on behalf of itself, its servants and agents, and insofar as any exclusion or limitation of liability or indemnity hereinafter appears, the same shall ensure to the benefit not only of the Company but also its servants and agents.

4. DEATH OR PERSONAL INJURY

Where in these conditions the Company excludes or limits its liability in respect of any loss or damage, the Company does not intend or purport thereby to exclude or limit liability for death or personal injury resulting whether wholly or (pro tanto) in part from its own negligence or that of its servants or agents, and these conditions shall take effect accordingly.

5. PRICES

The prices of the Goods shall be the Company's prices ruling at date of their despatch or as the case may be their collection from the Company's premises. Prices stated in all and any quotations by the Company are intended as guidance only, and both printed and quoted prices are subject to alteration without notice accordingly.

6. QUOTATIONS

Quotations are provided by the Company for guidance only and as an invitation to treat, and are subject to confirmation upon receipt of the Customer's order by the Company, and the contract between the parties shall be completed only when and upon the terms upon which the Customer's order is accepted by the Company.

7. PAYMENT

Payment of the price plus V.A.T. together with any other charges is due in full and without any right of set off on or before the last day of the month following that in which the Goods are delivered to or made available for collection by the Customer as the case may be. All and any monies remaining due and unpaid to the Company after such due date shall bear interest of 4% above the base rate for the time being adopted by the Company's Bank. If the Company has to instruct solicitors or other agents to recover monies owed by the Customer, the Customer will indemnify the Company in respect of all reasonable fees and costs payable by the Company to its such solicitors or agents.

8. TIME

Time is not of the essence of any contract between the Company and the Customer, and the Company will not be liable for any delays in the supply and/or delivery of goods or any losses whatsoever due to any such delays howsoever caused. Dates for supply and/or delivery of goods are approximate and quoted for guidance only, but without any responsibility on the part of the Company whatsoever.

9. SUBSTITUTION

Notwithstanding that time is not of the essence as aforesaid, the Company reserves the right if for any reason whatsoever it appears to the Company that it will be unable to supply the goods or any of them by its quoted date to supply Goods which in its reasonable discretion it believes will achieve comparable performance.

10. FORCE MAJEURE

In the event of any strike, lock out, trade dispute, accident, fire, flood or any natural disaster, war or civil disturbance, any statutes, rules regulations, orders or requisitions issued by any Government department, council or other duly constituted authority or act of God or delay in delivery of materials or any cause or contingency whatsoever beyond the reasonable control of the Company affecting the Company's supply or delivery of the Goods, this contract or that part thereof which is so affected may be terminated or suspended by the Company in its sole and absolute discretion. Such cancellation or suspension shall not constitute a breach of contract by the Company and the Company shall not be liable to the Customer for any loss or damage howsoever arising as a result of such cancellation or suspension.

11. PROPERTY

- All Goods delivered by the Company to or to the order of the Customer shall remain the property of the Company until all sums due to the Company from the Customer on any account whatsoever have been paid in full.
- Notwithstanding sub-clause (i) hereof and until resale of the Goods as provided for by sub-clause (iv) hereof the Customer shall without prejudice to any other duty (whether statutory or common-law) the Customer may have in respect of such Goods properly store and handle such Goods so that they shall remain safe and undamaged and clearly identifiable as the Goods of the Company.
- Provided that the Customer shall not be in breach of any term of this Contract the Customer shall be entitled to sell any delivered Goods in the ordinary course of the Customer's business.
- In the event of resale pursuant to sub-clause (ii) hereof the Customer shall open a separate Bank account in the name of the Company, and shall place in such Bank account and shall hold upon trust for the Company such part of the proceeds of resale as may be required to satisfy all sums due to the Company (whether under this contract or any other contract or otherwise) together with any interest payable thereon.
- Should the goods become constituents of or attached or be converted into other products whilst remaining the property of the Company as aforesaid, the Company shall have similar property in the other products as if they were solely and simply the Goods and accordingly sub clauses (i) to (iv) inclusive of this clause shall as appropriate apply to such other products.

12. RISKS

Notwithstanding the property in the Goods has not passed to the Customer, risk in the Goods shall pass to the Customer upon their delivery to or collection by the Customer.

13. DELIVERY

- Unless otherwise agreed in writing, it shall be the responsibility of the Customer to collect the Goods from the Company's premises forthwith upon being notified that the Goods are available for collection.
- Where the Company has agreed in writing to deliver the Goods to the Customer then:-
 - the Customer shall pay the Company the agreed delivery charge or if no such charge has been agreed, shall pay the Company such reasonable delivery charge as the Company may specify; and
 - the Customer shall ensure that the delivery point has safe access capable of carrying the weight of the delivery vehicle; and
 - the Company shall be entitled to charge the Customer for all packing cases or pallets or other like items supplied to the Customer and not returned to the Company; and
 - the unloading of the Goods from the delivery vehicle shall be the entire responsibility of the Customer who shall ensure that there is sufficient labour and machinery to carry out such unloading promptly, quickly and safely. The Company shall not be liable for any loss or damage howsoever caused during unloading of the Goods and the Customer shall indemnify the Company against all loss or damage to or suffered by the Company in connection with such unloading.

14. SHORTAGES OR ERRORS

- All Goods supplied by the Company shall be examined and checked immediately upon receipt by the Customer. Unless the Company is notified by letter despatched within three days of receipt of a material consignment (time being of the essence) of any alleged shortages or errors in such consignment, no claim whatsoever will be entertained by the Company in respect of any alleged shortages or of any allegation that the wrong goods have in error been supplied, and the Company will in no circumstances whatsoever be liable to replace or make good the same or be under any liability whatsoever to the Customer in respect of the same, howsoever caused.
- If the Company is so notified and if such notification the shortage or error be proved, the Company shall so soon as possible replace or make good the same, or if through circumstances beyond their control such replacement or making good be not possible then they shall refund the proportionate amount of the purchase price paid or in so far as such purchase price has not yet been paid give credit accordingly but in no circumstances whatsoever will the Company be further liable or in particular be responsible for any consequential loss allegedly caused by such shortage or error, howsoever occasioned.

15. DEFAULTS

- In the event of the Customer failing to pay in due time and in full any amounts due under or committing any other breach of these Conditions the Company shall (without prejudice to all and any its other rights) be entitled:-
 - At its entire discretion upon giving notice in writing to the Customer to terminate without any liability whatsoever on its part any such agreement or further agreement upon which further deliveries of goods are or remain to be made, and recover from the Customer in respect of such agreement or further agreements so terminated the Company's loss of profit and/or other losses caused thereby.
 - Upon 24 hours notice in writing to the Customer to repossess Goods delivered to the Customer and not paid for in full (and for that purpose to enter upon the property in which the same are situated) and (without prejudice to its rights pursuant to Clause 11 above) thereafter to resell the same, giving credit for the resale price or salvage value if any against the sums due and unpaid including interest
 - In relation to any future order or balance of order to insist on payment in full on a pro forma invoice basis only.
- If the Customer fails to accept delivery of the Goods or any of them or fail to comply with its obligations under clause 13 hereof the Company may (without prejudice to its rights to treat such failure as repudiatory) store such Goods at the cost and expense (including insurance) of the Customer and shall be as entitled to payment for such Goods under Clause 7 of these Conditions as if they had been effectively delivered to the Customer.

16. INSOLVENCY

In the event that (being an individual) the Customer commits an act of bankruptcy or has a receiving order made against him or (being a company) enters into liquidation (whether compulsory or voluntary) or has a receiver or administrative receiver or manager appointed of the whole or any part of its business or undertaking or if distress or execution be levied or threatened upon any of the Customer's property, then the Company shall (without prejudice to all and any other rights it may have) have the same rights as set out in clause 15 above

17. PATENTS/COPYRIGHTS etc.

All drawings, calculations, brochures and instructive matter furnished by the Company to the Customer in connection with his contract are and shall remain the Company's property, and must not be copied or shown to any third party (save where necessary in the ordinary course of the Customer's business) without the written consent of the Company. The Customer shall indemnify the Company against all damages, costs, losses penalties, claims and other matters whatsoever arising out of the infringement or alleged infringement of any patent, registered design or copyright or in respect of any passing off action which may result from the Company's carrying out or procuring the carrying out of work in respect of the manufacture and/or adaptation of the goods the subject matter of this contract in accordance with the requirements and/or to the order of the Customer

18. SPECIFICATIONS etc.

The Company takes due care in furnishing all and any written descriptions, illustrations, specification or other particulars in catalogues, brochures, price lists or other documents issued by the Company, but such information is subject to alteration without notice, and no warranty is given as to its accuracy nor is it or any of it incorporated as a term of this or any contract between the Company and the Customer, save and except if any such information is specifically confirmed in writing to the Customer by the Company other than in a quotation, and then only subject to recognised tolerances, and in no circumstances whatever is the Company liable for any oral statement as to the nature, condition, specification, performance, quality, suitability or endurance of or in any other manner relating to the goods whether made negligently or otherwise and whether purporting to be made by or on behalf of the Company, nor for any loss of any kind whatever howsoever caused resulting therefrom

19. DEFECTS

- The Customer shall be free at his own expense to test inspect and approve the Company's goods or sample the Company's goods prior to the contract, but unless the Customer shall have specifically disclosed the purpose for which he requires the Goods, and the Company shall have given a specific warrant in writing that the Goods are fit for such purpose, the Company gives no warranty whatsoever that the Goods are fit for the Customer's purpose.
- Save and subject as aforesaid the Company warrants that all Goods supplied to the Customer are at the time they are despatched to or collected by the Customer or merchantable quality and free from defect in material and workmanship and (insofar as the Company may not upon acceptance of order have stated otherwise) substantially in accordance with the Company's quotation if any and fit for their ordinary purpose. However, the Company shall in no circumstances whatsoever be liable for a breach of such warranty howsoever caused unless such defects or failures or non correspondence with description or any other complaints of such breach are notified in writing to the Company by the Customer by letter despatched within three months of the receipt of the goods and within five days of the discovery by the Customer of such complaint, whereupon immediately after such notice being given the Customer shall return the goods to the Company's premises carriage paid unless the goods be physically incapable of being returned, in which case he shall give reasonable access and opportunity to the Company for inspection by or on behalf of the Company and:-
 - In respect of such complaints so notified which are found upon examination by or on behalf of the Company to render the Company in breach of their said warranty, the Company will (at its entire discretion) replace or repair free of charge the Goods in question, or, if replacement or repair is impossible, shall refund the purchase price, reimbursing or paying for all necessary transport charge limited to the cost of transport from and/or to the original consignment address of the Goods.
 - If the Goods so complained of are found not to be defective then they will be returned to the Customer at the Customer's expense and the Customer shall reimburse to the Company all its expenses arising out of the making and investigating of the complaint.
- Save as aforesaid no other condition or warranty is expressed or implied in this contract, and the Company will accept no responsibility and is under no liability whatsoever in respect of any defects in the Goods howsoever caused or any loss consequential or otherwise howsoever occasioned. In the circumstances the Customer is advised to check Goods before use or before either incorporating them into other goods or carrying out works of alteration or adaptation thereto.

20. ADVICE etc.

Any advice or recommendation given orally or in writing by the Company, its servants or agents whether requested by the Customer or any other party or not is for guidance only and is not intended to be relied upon, and the Company shall not be under any liability whatsoever in respect of any act or omission of a recipient (whether direct or indirect) of any such advice or recommendation or in respect of any loss whatsoever howsoever occasioned in any manner resulting therefrom.

21. CONSEQUENTIAL LOSS

For the avoidance of doubt, the Company shall not in any circumstances whatsoever (even in respect of defects for which the Company may have pursuant to clause 19 above accepted responsibility) be liable for any consequential losses whether arising out of inability of the Customer or any other party to use the Goods or out of any use made of them or howsoever occasioned.

22. INDEMNITY

- Subject to sub clause (ii) below the Customer shall at all times keep the Company, its servants and agents effectively indemnified against all actions, proceedings, costs, charges, claims, expenses and demands whatsoever which may be made or brought against the Company its servants or agents by any third party in respect of any alleged injury, loss damage or expense arising out of, or in connection with the Goods or services supplied by the Company to the Customer.
- Where actions, proceedings, costs, charges, claims, expenses and demands such as are referred to in (i) above are in respect of death or personal injury caused wholly or in part by the negligence of the Company, its servants or agents, neither the Company nor its servants or agents shall claim indemnity from the Customer in respect of such proportion of such actions, proceedings, costs charges, claim expenses or demands as shall be found to be due to their own negligence.

23. NOTICES

All notices to be served by one party on the other (unless specifically provided for in these conditions) shall be deemed duly served seven days after posting if posted by first class or airmail pre paid post to the registered office of the other party or in the absence of such registered office to the address notified in writing between the parties prior to or at the time of contract.

24. ENGLISH LAW AND JURISDICTION

This contract and these conditions shall be governed and interpreted by English law, and the parties heret irreversibly submit to the jurisdiction of the English Courts.

25. HEADINGS

The headings to each clause are for identification only and are not intended to form part of these conditions