

(including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by our negligence or otherwise howsoever.

- 5.5 We reserve the right to make delivery by installments and tender a separate invoice in respect of each installment. Our failure to deliver any one or more installments or any claim by You in respect of any one or more installments shall not entitle You to treat the Contract as a whole as repudiated.
- 5.6 The price agreed includes our normal delivery charges but We may make an additional charge if We incur further costs or expenses such as (but not limited to) those caused by delivery of less than a full load; complying with your request for delivery outside our normal delivery pattern or trading hours or by installments; orders of small value which are not economical for us to deliver free.
- 5.7 You must provide the necessary labour for unloading the Goods and unloading is to be completed with reasonable speed. If our delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery or if We provide additional staff to unload Goods an additional charge will be made.
- 5.8 You may collect Goods from Us during our trading hours. If they are not collected within 14 days from when we notify You that they are available a storage charge will be payable before the Goods are released.
- 5.9 If You fail to take delivery accept or collect the Goods within the agreed time in our discretion We may make an additional charge, invoice You for the Goods or treat the contract as repudiated and in any case recover our losses from You.
- 5.10 If You collect Goods from Us You are solely responsible for the size weight and positioning of the load on the vehicle and shall indemnify Us in respect of all costs claims losses or expenses We may incur as a result of your collecting the Goods including any resulting from our negligence.
- 5.11 If the Goods are to be deposited other than on your private premises You shall be responsible for compliance with all regulations for all steps which need to be taken for the protection at all times of persons or property.
- 5.12 We shall make a charge for packaging including crates cases and pallets which shall be credited if the crates cases or pallets are returned carriage paid in good condition within seven days of delivery. Polythene sacks are not returnable.
- 5.13 You will indemnify Us in respect of all costs claims losses or expenses We may incur as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such costs claims losses or expenses are due to our negligence.

6. INSPECTION

- 6.1 You shall inspect the Goods at the place and time of unloading or collection but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.
- 6.2 **6.2.1 You must advise Us by telephone immediately and give Us written notice within three working days of unloading of any claim for short delivery.**
- 6.2.2 If you do not give Us notice within that time the Good will be deemed to have been delivered in the quantities shown in the delivery documents.
- 6.2.3 You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.
- 6.2.4 Our liability for short delivery is limited to making good the shortage.
- 6.3 **6.3.1** Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity With the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample You must advise Us by telephone immediately and give us written notice within three working days of inspection.
- 6.3.2 If You fail to give Us that notice within that time the Goods will be deemed to have been accepted and You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods.
- 6.3.3 If You fail to give Us that notice within that time Clause 8 shall have effect.

7. TITLE AND RISK

- 7.1 Risk in the Goods shall pass to You when the Goods are delivered.
- 7.2 The property in the Goods shall remain with Us until You pay all sums due to Us whether in respect of this Contract or otherwise.
- 7.3 Until title passes:-
- 7.3.1 You shall hold the Goods as our fiduciary agent and bailee.
- 7.3.2 The Goods shall be stored separately from any other goods and You shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods.
- 7.3.3 We agree that You may use or agree to sell the Goods as principle and not as our agents in the ordinary course of your business subject to the express condition that at our discretion the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for Us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as our money.
- 7.4 We shall be entitled at any time to recover any or all of the Goods in your possession to which We have title and for that purpose We our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

8. LIABILITIES

- 8.1 Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation.
- 8.2 Subject to Clause 8.1 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 8.3 below.
- 8.3 Where but for the effect of Clause 8.2 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 8.4 below shall in our sole discretion either repair the Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- 8.4 We shall not be liable under Clause 8.3:
- 8.4.1 If the defect arises from fair wear and tear
- 8.4.2 If the defect arises from wilful damage negligence abnormal working conditions mis-use alteration or repair of the Goods failure to follow British Standard or industry instruction relevant to the Goods or storage of the Goods in unsuitable conditions (but this sub-clause shall not apply to any act or omission on our part).