

SEARCH

WILLIAM G. SEARCH LIMITED

CONDITIONS OF SALE

1. GENERAL

No order will be accepted except on the Company's Acknowledgement of Order Form incorporating these conditions. Any order placed by a Customer shall be deemed to constitute an offer by such Customer to enter into a Contract upon these conditions to the exclusion of all other conditions including any conditions in a Customer's order.

2. QUOTATIONS AND PRICE

- a. No quotation by the Company shall constitute an offer by the Company and the Company reserves the right to revise quoted prices and charges in accordance with market conditions at the date of despatch and goods supplied will be charged at the price applicable at the date of despatch provided always that if any quoted price of any goods is to be increased by more than 10%, the Customer shall have the right to cancel the order in respect of such goods within 7 days, (but not thereafter) of written notification of such increases from the Company subject to the Customer forthwith returning the goods (if supplied) undamaged.

3. TERMS OF PAYMENT

- a. Unless otherwise specified by the Company in writing payment of the invoice price shall be made in full prior to despatch.
- b. The Company reserves the right to charge interest on all overdue accounts which shall carry interest at the annual rate of four per cent above H S B C Bank Base Rate from time to time in force and either to suspend all further deliveries until the default be made good or cancel the order so far as any goods remain to be delivered thereunder.

4. DELIVERY

- a. Any estimated date given for delivery shall not be of the essence of the Contract and the Company shall incur no liability whatsoever for failure to deliver by such date.
- b. If for any reason the Customer is unable to or fails to accept delivery the balance remaining undelivered of any order may be invoiced and the Company shall if its storage facilities permit store the goods until their actual delivery and the Customer shall be liable to the Company for all costs (including insurance) incurred by the Company in respect of such storage and this provision shall be in addition to and not in substitution of any other payment or damages for which the Customer may become liable in respect of failure to take delivery.
- c. If for any reason the Customer is unable or fails to accept delivery of any goods for a period of 6 months after delivery has been tendered by the Company the Company may dispose of the goods and deduct from the proceeds of any such sale the invoice price and interest due and all expenses incurred in respect of storage and insurance.
- d. Any failure or any defect in any one delivery under any one order comprising several deliveries shall not entitle the Customer to refuse acceptance of further deliveries under that order.
- e. Where goods or Customer goods are delivered to premises nominated by the Customer the Customer shall provide unimpeded access to the premises and adequate labour and equipment for loading and unloading the goods and shall be responsible for and indemnify the Company against all injury to persons or damage to property resulting therefrom.

5. PASSING OF RISK

- a. Save as hereinafter provided the risk in any goods sold to the Customer shall pass to the Customer when the goods are loaded on transport for despatch to the Customer whether the transport is arranged by the Company the Customer or a third party.
- b. The risk in any goods transported by the Company's vehicles shall pass on delivery subject to the provisions of clause 4(e) above.

6. RETENTION OF TITLE

- a. The property in any goods whatsoever delivered by the Company to the Customer shall not pass to the Customer until payment in full has been received by the Company in respect of all the goods.
- b. If payment is overdue in whole or in part the Company may (without prejudice to its other rights) recover or resell the goods or any of them and may enter on the Customer's premises by its servants or agents for that purpose. (Without prejudice to clause 3) payment shall be deemed to be due on the commencement of any act or proceeding in which the Customer's solvency is involved.

- c. Until payment in full is received by the Company or the Customer sells the goods by way of bona fide sale at full market value the Customer shall store the goods in such a manner as to make it clear to any third parties that the goods are the property of the Company and not the Customer.
- d. Until payment in full is received by the Company the relationship of the Customer to the Company shall be fiduciary in respect of the goods and if the same are sold by the Customer by way of bona fide sale at full market value the Customer shall hold the proceeds of sale as trustee for the Company until payment is made and the Company shall have the right to trace the proceeds thereof and/or the Customer will if so required by the Company at the Customer's expense assign to the Company any rights that the Customer may have against any third party.
- e. If any of the goods are incorporated or used as material for other products before payment in full is received by the Company the property in the whole of such other products shall be and remain with the Company until such payment has been made or other products have been sold as aforesaid and the Company's rights in the goods shall extend to those other products.
- f. Notwithstanding the provisions of this clause the Company may bring an action for the price of the goods in the event of non-payment by the due date as if the property in the goods had passed.

7. LIMITATION OF LIABILITY

- a. Where delivery is other than at the Company's premises and it is expressly agreed that risk remains with the Company until delivery to the Customer, no liability will attach to the Company for any discrepancy in the quantity of goods or damage thereto in transit unless notification thereof is received by the Company in writing within 14 days of delivery.
- b. The Company shall not be liable for any defect in the goods save defects in design materials or workmanship discovered within 6 months of the date of delivery and which are notified to the Company within 14 days of the date the Customer discovered the defect or ought reasonably to have discovered the defect and provided always that:
 - (i) the Customer ceased to use the goods if so requested by the Company;
 - (ii) the goods have not been incorrectly installed, altered or stored or in any other way affected by the misuse or negligence of the Customer;
 - (iii) the goods are returned forthwith to the Company (if the Company so requires);
 - (iv) the Customer has paid the price of the goods in full;
 - (v) the Company and its agents are permitted access to inspect the goods;
 - (vi) time shall be of the essence in respect of the time periods in this clause;
- c. The Company shall only be liable under sub-clauses (a) and (b) above at its option:
 - (i) to replace any damaged or defective unused goods or
 - (ii) to accept the return of any damaged or defective goods and to credit the Customer with the price thereof or
 - (iii) to make the Customer in respect of any damaged goods or any shortage an allowance representing the difference between the value of the goods at the time of notification by the Customer and the value they would have had if they had been in accordance with the contract providing the Customer pays the balance not in dispute according to normal terms or
 - (iv) to make good any shortage.
- d. The foregoing states the entire liability in contract and in negligence (save in the case of death or personal injury arising from the Company's negligence) of the Company and replaces and extinguishes all and every condition or warranty or representation express or implied in respect of quality, fitness for purpose of merchantability description or otherwise.
- e. The Company shall not be liable for loss of profit interest paid or payable by the Customer's loss of orders or expense consequent upon disruption of business or any other consequential loss.
- f. Save where liability attaches to the Company as above the Customer shall indemnify the Company against any claim by any third party arising out of or in connection with any of the goods.
- g. The sale or supply of goods is strictly on the terms that the Customer has had every opportunity of examining the goods and is satisfied as to their suitability for any particular purpose.
- h. The Customer acknowledges that all specifications quotations information in catalogues, representations, whether written or oral and forecasts of performance howsoever given are approximate only and do not form part of the Contract between the Customer and the Company and the Company shall have no liability in respect thereof.
- i. Without prejudice to any other condition if the Company shall be liable to the Customer for any loss or damage such liability shall be limited to the invoice price of the goods cancelled.