

Terms & Conditions of Sale

1. INTERPRETATION

1.1. In these conditions:

"Seller" means A. & W. Cushion Limited

"Buyer" means person firms or companies purchasing or ordering goods from A. & W. Cushion Ltd.

"Goods" means goods and services including processing and preservative treatment (including any instalment thereof) which the Seller is to supply in accordance with these Conditions.

"Conditions" means the standard terms and conditions of sale included in Clauses 1 to 11 hereof and any agreed variations thereto confirmed in Writing by the Seller to the Buyer.

"Contract" means the contract for the sale of the Goods.

"Writing" includes letter and facsimile transmission.

"Consumer Sales" refers to any Contract where the Buyer deals as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977.

2. CONSUMER SALES

2.1 In Consumer Sales any provision of these Conditions which by virtue of The Unfair Contract Terms Act 1977 would be of no effect shall not apply.

2.2 The statutory rights of a Buyer under Consumer Sales are not affected by the Conditions.

3. BASIS OF THE SALE

3.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer.

3.2 Where the Contract stipulates the basis of sale is "to arrive" or "subject to shipment and safe arrival" it is agreed:

(a) all such sales shall be subject to shipment and safe arrival so that the Seller shall be under no liability if the Goods are not shipped or do not arrive at their port or place of destination;

(b) any variation in the total of the war risk insurance rate or of any charge, tax, levy, duty or impost on the Goods shall be for Buyer's account; and

(c) directions for delivery are to be given by the Buyer to the Seller in time to enable them to be carried out upon arrival. In the absence of such instructions or if ordered by the Buyer to rail or road transport or to craft and the Buyer fails to provide such transport when the Goods are available the Seller may take such steps as he may in his absolute discretion consider to be necessary to clear the Goods and may recover from the Buyer all expenses thereby incurred.

3.3 The Buyer warrants it will not act upon and acknowledges the Seller shall not be liable to the Buyer for any advice or representations given by or on behalf of the Seller before or after the Contract was entered into unless such are confirmed by the Seller in Writing to the Buyer.

3.4 Any error or omission in any documents issued by the Seller shall be put right by the Seller without any liability on the part of the Seller.

4. ORDERS AND SPECIFICATIONS

4.1 No Contract may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses whether direct or indirect and including (but without limitation) loss of profits, economic loss and all other costs, damages, charges and expenses whatsoever incurred by the Seller as a result of such cancellation.

4.2 The Seller cannot accept the return of specially ordered, milled, or treated Goods. The return of stock items may be accepted by prior arrangement and in such cases the Seller reserves the right to levy an appropriate re-stocking charge which the Buyer agrees to pay.

5. PRICE OF THE GOODS

5.1 Subject to clause 5.2, unless some other price for the Goods has been agreed between the Buyer and the Seller in Writing the price of the Goods shall be the Seller's price for such Goods prevailing at the date of despatch.

5.2 Subject to clause 5.3 and unless otherwise agreed by the Seller in Writing, all written price quotations given by the Seller are valid for 5 working days from the date they are given. Any such quotations issued by the Seller shall be invitations to the Buyer to place an order for goods and services at the quoted price. They are not offers or tenders and are not capable of binding acceptance and any order shall be subject to confirmation by the Seller upon receipt.

5.3 The Seller reserves the right to increase the price of the Goods where such increase is due to any changes to or delay in performance of the Contract caused by actions, defaults and requests by the Buyer or by virtue of any event beyond Seller's control save that the Buyer shall have the right (except for Goods specially manufactured to their specification) to cancel the Contract within three working days of being notified of the increase in price which is due to such event by giving notice in Writing to the Seller.

5.4 All prices quoted, including Consumer Sales, are exclusive of Value Added Tax where applicable.

5.5 If any contract made by the Seller with a third party to procure the Goods provides for an increase in price or for the cancellation of such contract in the event of alteration in rates of exchange the Seller shall have the right correspondingly to cancel the Contract or increase the price to the Buyer.

6. PAYMENT

6.1 Where the Buyer has an authorised (in Writing) and current credit account facility with the Seller, payment is due by the end of the month following the month in which the Goods are invoiced, subject to all sums currently owing by the Buyer not exceeding any previously notified credit limit and subject to the Seller's right to terminate any credit account by notice to the Buyer. In the event that the previously notified credit limit has been exceeded or upon such termination, all amounts outstanding and owed by the Buyer to the Seller shall be repaid forthwith.

6.2 In all other Contracts, payment is due at the time of placing the order.

6.3 If the Buyer fails to make any payment on the due date under the Contract or any other contract with the Seller then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

(a) cancel the Contract or suspend any outstanding deliveries to the Buyer.

(b) appropriate any payment made by the Buyer as the Seller may think fit notwithstanding any specific allocation by the Buyer, and

(c) charge the Buyer interest on all accounts unpaid at the rate of four per cent per annum above the base rate of the National Westminster Bank Plc from the date(s) the amounts were due until the date payment in full (including interest) is made.

7. DELIVERY

7.1 The Seller shall endeavour to comply with any dates quoted for delivery of the Goods but shall not be liable for any delay in delivery caused by reasons beyond Seller's control. Time for delivery shall not be of the essence under the Contract.

7.2 If the Seller fails within a reasonable period after any agreed delivery date to deliver the Goods and such failure is caused by a reason within the control of the Seller the Seller's liability to the Buyer shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. Under no circumstances shall the Seller be liable to the Buyer for loss of profits or market or any consequential or economic loss whatsoever whether direct or indirect.

7.3 When the Seller agrees to deliver the Goods to the Buyer this shall be to the nearest point on a road suitable in the opinion of the driver for the vehicle used. The Buyer shall provide the necessary labour and equipment to unload the vehicle and/or container without undue delay.

8. RISK AND PROPERTY

8.1 The risk of damage to or loss of the Goods shall pass to the Buyer:

(a) in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

(b) in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Goods belonging to the Buyer and accepted for processing such as milling or timber preservative treatment remain at Buyer's risk. It is a condition of all such Contracts for processing that no warranty whatever is given or implied except that the Seller will exercise reasonable care and skill, and shall not be liable for any loss, deterioration, or damage arising from any cause whatsoever.

8.3 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received cash or cleared funds payment in full of the price of the Goods and any interest due thereon and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due whether under the terms of the Contract or any other Contract.

8.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

8.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. WARRANTIES AND LIABILITY

9.1 Goods are not tested or sold as fit for any particular purpose and any term, warranty or condition expressed, implied or statutory to the contrary is excluded.

9.2 It is hereby declared and agreed:

(a) that the Buyer is skilled and knowledgeable with regard to the Goods;

(b) that the Buyer does not rely on the Seller's skill or judgment with regard to the Goods;

(c) that the Buyer will inspect the Goods in a reasonably thorough manner at its own premises prior to use.

9.3 Goods manufactured to the design or specification of the Buyer or their experts carry no undertaking except compliance; with the design or specification.

9.4 In no circumstances whatsoever shall the liability of the Seller (in Contract, tort or otherwise) to the Buyer arising under, out of or in connection with this Contract or the Goods exceed the invoice price of the Goods the subject matter of any claim.

9.5 If and to the extent that any person by whom the Seller has been supplied with the Goods (in this sub-clause referred to as "the Supplier") validly excludes, restricts or limits the liability to the Seller in respect of the Goods or of any loss or damage arising in connection therewith the liability of the Seller to the Buyer in respect of the Goods or of any loss or damage arising in connection therewith shall be correspondingly excluded, restricted or limited. If the Supplier validly excludes, restricts or limits his liability to the Seller in respect of any liability of the Seller to the Buyer in connection with the Goods then the liability of the Seller to the Buyer shall be excluded, restricted or limited to the extent to which the Supplier is liable to the Seller in respect of the Seller's liability to the Buyer and no further. Any term, warranty or condition expressed or implied or statutory to the contrary is (except in the case of Consumer Sales) excluded. The Seller will upon request supply the Buyer with details of any such exclusion, restriction or limitation.

9.6 All terms expressed or implied relating to the quality of the Goods are warranties the breach of which gives no right to reject the Goods or terminate the Contract in any circumstances whatsoever.

9.7 If it is agreed that the Goods be processed by the Seller then the Seller may arrange for such processing to be performed by a third party and in such case the operation shall be carried out on the standard terms and conditions of the third party but entirely at the Buyer's risk and no liability whatsoever is accepted by the Seller for any loss, deterioration or damage arising from such processing whether carried out by the Seller or by third parties to whom such processing is sub-contracted. The Buyer hereby grants to the Seller authority to conclude contracts with such third parties. If subsequently the Goods are processed by the Buyer the Seller is to have no liability for any damage or deterioration to the Goods or any loss arising thereout unless any such process was carried out with the prior approval in Writing of the Seller.

9.8 Notice of any claim arising out of or in connection with this Contract must be given in Writing to the Seller as soon as the Buyer becomes aware of the same but in any event within ten working days from when the Goods were collected or delivered failing which all claims (other than claims arising out of or in connection with defects not discoverable upon full and proper examination of the Goods) shall be deemed to be waived and absolutely barred. In any event, any claims in respect of latent defects shall be deemed to be waived and absolutely barred twelve months after the Goods are collected or delivered.

9.9 The Seller shall be under no liability for shortage or damage in transit or for deviation, misdelivery, delay or detention unless the Seller and the carrier are advised thereof in Writing, otherwise than upon a consignment note or delivery document, within three working days and a claim is made on the Seller and the carrier in Writing within seven working days.

9.10 The Buyer shall only be entitled to pursue claims in respect of Goods available for inspection by the Seller and in any event the Seller shall in respect of any claim be entitled to assume that any Goods not available for inspection are at the top grade for such Goods within the Contract.

9.11 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's control.

10. INSOLVENCY OF BUYER

10.1 The provisions of Clause 10.2 apply if:

(a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(b) an encumbrancer takes possession or a Receiver is appointed, of any of the property or assets of the Buyer; or

(c) The Buyer ceases or threatens to cease to carry on business; or

(d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

(e) the credit insurers of the Seller are not prepared to offer credit insurance in respect of the Buyer or subsequently withdraw such cover or it becomes unavailable due to a credit limit in respect of the Buyer being exceeded and the Buyer fails within seven working days notice of being so required by the Seller to provide reasonably sufficient security.

10.2 If any of the circumstances or events under Clause 10.1 arise or apply, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. GENERAL

11.1 No waiver of or variation to these Conditions shall be binding unless agreed in Writing by the Seller to the Buyer.

11.2 The Buyer shall not be entitled to withhold or set off payment of any amount due to the Seller under the terms of this Contract whether in respect of any claims of the Buyer in respect of faulty or defecting Goods or for any other reason which is contested or liability for which is not admitted by the Seller.

11.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

11.4 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

11.5 The Contract shall be governed by the Laws of England.

11.6 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.7 Any dispute and/or claim which cannot be settled amicably shall (except in the case of Consumer Sales) be referred to arbitration by a sole arbitrator if the parties can agree upon one, otherwise to two arbitrators with one to be appointed by each party and if the arbitrators fail to agree upon an award they shall appoint an umpire to decide on same. In either case the appointments and conduct of the arbitration shall be in accordance with and subject to the provisions of the relevant Arbitration Act(s).