

TERMS OF SALE AND DELIVERY for PRODUCTS

15 March 2019

1. Application

The terms of sale and delivery apply to all offers, orders and deliveries, unless otherwise agreed in writing.

2. Offers

All offers are made subject to the goods being unsold, as specified in Sub-section 3. If VMSL has submitted an offer, without stipulating a specific date for acceptance, the offer is no longer valid if VMSL has not received the Purchaser's acceptance of the offer within four weeks from the date of the offer.

3. Prior sale

If VMSL clearly makes the offer subject to the goods being unsold, it means that until the Purchaser's acceptance has reached VMSL, the latter shall be entitled to sell the goods that he has offered to the Purchaser to any third party on the terms and conditions offered to the Purchaser. In so far as any such prior sale has taken place, VMSL shall not be bound by the delivery time originally offered to the Purchaser. In this situation the offer originally submitted to the Purchaser lapses.

4. Prices

Unless another currency is expressly specified, all prices shall be in Pounds Sterling (GBP) and exclusive of value-added tax. VMSL reserves the right to change the price if, after VMSL final offer/acceptance but before the time of payment, documented new or increased costs are incurred by VMSL as a result of changes in customs duty, taxes, etc., to the extent that any such additional costs can be attributed to the consignment in question.

5. Terms of payment

- 5.1. Payment shall be made 30 days from date of invoice unless otherwise agreed. . If – payment is to be made against a proforma invoice , remittance shall be by BACS prior to despatch of the goods.
- 5.2. If the delivery of goods to the Purchaser is delayed due to circumstances for which the Purchaser is responsible (claimant's default), the Purchaser shall still be obliged to pay the purchase price or make other arrangements for the purchase price to be paid at the agreed or implied time, unless informed otherwise in writing by VMSL.
- 5.3. If payment is not made on the latest payment date (the due date), c.f. Section 5.1, VMSL shall be entitled to charge the Purchaser interest on all late payments in accordance with the late Payment of Commercial Debts (Interest) Act 1998.
- 5.4. The Purchaser shall not be entitled to offset a counter-claim against VMSL, unless he has obtained VMSL acceptance thereof in advance in writing, and he has no right to withhold part of the amount due owing to such a counter-claim.

6. Title

- 6.1. Within the limits of the invariable rules of law, VMSL retains his title to the goods until the entire purchase price and the costs incurred by VMSL for the Purchaser's account have been paid to VMSL, or to the person to whom he has passed on his retention of title, as specified in Sub-section 15.
- 6.2. If the goods are intended to be incorporated into or joint with other objects, the retention of title shall cease to exist once the incorporation or the joining has been completed.
- 6.3. In the case of conversion or processing of the goods, the retention of title shall continue to exist in such a way that it also covers the converted or processed product at the value it had before conversion or processing.

7. Delivery

- 7.1. Delivery shall take place from VMSL address, regardless of whether VMSL, according to a specific agreement with the Purchaser, is obliged to transport the goods to the Purchaser by use of an independent carrier or by use of his own people, according to Incoterms 2000.
- 7.2. The delivery time shall be determined by VMSL applying his best judgement to the circumstances of which he was aware at the time of entering into the contract. Unless otherwise agreed, any delay in delivery of up to two weeks from the agreed delivery date shall be considered to constitute delivery on time and shall not entitle the Purchaser to exercise any sanctions against VMSL for breach of contract.
- 7.3. If a delay is caused by circumstances beyond VMSL control as specified in Sub-section 12.3 below, the delivery time shall be postponed by the duration of the obstacle, regardless of whether the obstacle arose before or after the agreed delivery time. If, however, the obstacle persists for more than three months, each party shall be entitled to cancel the contract without incurring any liability.
- 7.4. In the above mentioned cases, VMSL shall notify the Purchaser of any changes to the delivery date without any undue delay.

8. Packaging

- 8.1. Unless a special packaging is required, packaging will be included in the price. The Purchaser shall pay for special packaging.
- 8.2. Packaging shall only be accepted in return by separate contract.

9. Product information

Drawings, specifications, descriptions, etc., supplied by VMSL to the Purchaser, before or after entering into the contract, shall remain VMSL property and must not be passed on without written contract with VMSL or be utilised in any other way in contravention of VMSL permission. If the

aforsaid material has come into the possession of the Purchaser and the contract subsequently is terminated or cancelled, the Purchaser is obliged to immediately return all the material received to VMSL.

10. Product changes

VMSL reserves the right to change without notice the data submitted to the Purchaser. VMSL will notify the Purchaser in a reasonable time of any such changes.

11. Complaints about defects

- 11.1. Upon delivery, the Purchaser shall immediately inspect the goods in such a way as required by proper trade custom. This inspection shall take place as soon as possible and shall be as thorough as the circumstances permit.
- 11.2. If the Purchaser wishes to invoke that the goods are defective, after the Purchaser has ascertained or should have ascertained the defect, the Purchaser must immediately forward a written complaint to VMSL, specifying the nature of the defect. If the Purchaser has ascertained or should have ascertained the defect and he fails to forward a complaint to VMSL as described herein, he shall lose his right to invoke the defect. If the goods are defective, the Purchaser must claim compensation for those defects by notifying VMSL of the nature of the defect in writing within a reasonable time after he ascertained or should have ascertained the defect. The Purchaser shall lose the right to demand compensation for defects unless he notifies VMSL thereof when he becomes aware of the defect or should have become aware of the defect.
- 11.3. At VMSL option, the defect will be either rectified or VMSL will make a replacement delivery.
- 11.4. If VMSL fails to comply with Sub-section 11.3 above within a reasonable time, the Purchaser shall be entitled to terminate the contract, claim a *pro rata* reduction of the purchase price, or claim compensation in compliance with the general rules of British law.
- 11.5. The Purchaser shall lose the right to invoke any defects, unless he notifies VMSL within 12 months of the delivery date of that defect (unless the goods are covered by an extended warranty). VMSL assumes the same obligations for a period of 12 months in respect of parts that have been rectified or replaced under Sub-section 11.3 above. However, this is subject to the restriction that VMSL liability may not be extended beyond 12 months from the original delivery date for any part of the goods.
- 11.6. No amendment or addition to the goods sold shall be binding unless accepted in writing by VMSL and shall relieve VMSL from any obligations.

12. Limitation of liability

- 12.1. VMSL cannot be held liable for any loss over and above the invoice amount.
- 12.2. VMSL shall not be held liable for any consequential loss, loss of profits or any other indirect loss suffered by the Purchaser as a result of delayed delivery or defects in the goods.
- 12.3. Under the circumstances listed below, no liability shall be imposed on VMSL if VMSL is hereby prevented from fulfilling the contract or renders the fulfilment thereof as unreasonably burdensome: labour disputes, and any other circumstances beyond the parties' control such as fire, war, mobilisation or similar unforeseen military service, requisitioning, confiscation, currency restrictions, riot and disturbances, inability to secure transportation, general shortage of materials, restrictions in the use of power, as well as defective or delayed deliveries from sub-suppliers due to any of the circumstances mentioned in this subsection. Circumstances as specified above occurring before the offer/the contract, only imply exemption from liability if their impact on the fulfilment of the contract was not foreseeable when entering into the contract.
- 12.4. Without undue delay, VMSL is liable for notifying the Purchaser in writing if circumstances as specified in Sub-section 12.3 should occur.

13. Returns

- 13.1. Return of the goods sold shall generally only be accepted by VMSL subject to prior contract.
- 13.2. In all cases where the Purchaser is entitled to terminate or cancel the contract, or if goods are returned in order for VMSL to repair them or provide a replacement delivery, it is a condition that they are returned in the original packaging and are shipped at the Purchaser's cost and risk. VMSL will return goods to the Purchaser at VMSL cost and risk.

14. Product liability

Claims for compensation are based on the rules governing product liability. In so far as no other invariable rules are specified, VMSL shall not be liable for loss of production, loss of profit or any other indirect loss.

15. Assignment of rights and obligations

VMSL shall be entitled to assign all rights and obligations under the contract to a third party.

16. Disputes

Either party may at any time refer any dispute arising out of the purchase agreement to adjudication in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998. The Adjudicator Nominating Body under the Scheme shall be the Confederation of Construction Specialists.



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