

Ian Harvey Fabrications Limited

Standard Terms and Conditions of Sale

GENERAL

- 1 a In these conditions "we" or "us" means Ian Harvey Fabrications Limited specified in the contract for the sale of goods to you and "you" means the buyer, and "our" and "your" shall be construed accordingly.
- b These conditions apply to all sales of goods by us and shall prevail over any other terms or conditions contained or referred to in your order or in correspondence or elsewhere or implied by trade, practice or course of dealing unless such other terms or conditions are specifically agreed in writing by one of our Directors. No variation or exclusion of these conditions shall be effective unless agreed in writing in advance by one of our Directors. No terms or conditions of any main building contract or sub-contract shall affect these conditions whether or not we have notice of them.
- c A person who is not a party to a contract with us has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract. You may not assign the contract or any part of it without our prior written consent.
- d If any provision of the contract is found by any court or other competent body to be wholly or partly illegal, invalid, or unenforceable, it shall to the extent of such illegality, invalidity, or unenforceability be deemed severable and the remaining provisions of the contract shall continue in full force and effect.
- e The heading above each condition is for reference only and shall not affect or limit the interpretation and effect of these conditions.
- f Any typographical error or clerical omission in any sales literature, quotation, price list, or other document issued by us may be corrected without liability on our part.

QUOTATION AND ESTIMATES

- 2 A quotation given by us is an invitation to treat and not an offer. We may withdraw or amend any quotation at any time prior to our acceptance of your order, which will occur when we issue a written acknowledgement or when we begin to process your order, whichever is the earlier.
- 3 You acknowledge that you do not rely on any representations made by our employees or agents. Any estimate of quantities needed or advice as to the suitability of the goods for their purpose.

PRICE

- 4 a Subject to clause 4(c), the price payable shall be as published in our current price list at the time of delivery, even if this differs from the price stated in any quotation given by us, unless the price quoted was not a list price current at the time of the quotation.
- b Subject to clause 4(c), if there is no list price for the goods sold, or if the price quoted was not a list price current at the time of the quotation, the price payable shall be the price stated in the quotation provided that we have accepted the order within the period stated in the quotation.
- c We may make such alterations to our price list as we think fit. In particular we may at any time and without notice to you revise the price payable for the goods sold to take account of increases in costs including, without limitation, costs of any goods or materials carriage labour or overheads the increase of imposition of any tax duty or other levy and any variation in exchange rate since the date of preparation of the current price list or (in cases falling within clause 4(b) acceptance of the order).
- d Prices are exclusive of Value Added Tax which shall be payable at the rate prevailing at the tax point.
- e Unless we otherwise agree in writing we may charge you the cost of transport of the goods to the destination requested by you.

TERMS OF PAYMENT

- 5 a You may open a credit account, subject to satisfactory credit references being obtained and at our discretion. All amounts due to the company, unless otherwise agreed in writing, shall be payable in pounds sterling not later than the end of the month following delivery. If you default in making payment, we may charge interest on the account, together with costs and expenses, in accordance with clause 5(d).
- b For all other transactions, payment shall be in cash with the order, or, at our discretion, on delivery.
- c You may not withhold or set off payment of any amount due to us.
- d If you do not make any payment on the due date then, without prejudice to any other right or remedy available to us, and whether or not any part of your account is subject to query, we may –
 - (i) cancel the contract or suspend any further deliveries to you;
 - (ii) appropriate any payment by you to such of the goods (or the goods supplied under any other contract between you and us) as we may think fit' and
 - (iii) charge you interest at the rate of 4% above the base rate of the Bank of Scotland on the unpaid balance, to accrue on a day to day basis from the due date for payment until receipt by us of the full amount whether before or after any judgement; and

- 5 d (iv) be indemnified by you against all costs and expenses incurred by us in recovering sums due to in exercising our rights pursuant in clause 5.
- e If you are an existing credit account customer and intend, being a company, to alter your constitution or, being a sole trader or partnership, to become incorporated or amalgamated with others, you must give prior written notice to us of the intended change if you wish to continue credit account facilities following the intended change. Continuance of trading after the change shall be at our discretion and only deemed undertaken by us if a written acknowledgement is issued by our Credit Controller or one of our Directors. You agree that we may obtain, retain, and provide third parties, references as to your financial standing.

DELIVERY

- 6 a We shall use reasonable endeavours to meet any agreed delivery date. However delivery dates or times mentioned in any quotation or elsewhere are approximate and not part of any contract and we shall not be liable to you if we do not deliver on or at any particular date or time, nor shall time be of the essence of any contract.
- b We will deliver to site on the understanding that there is a suitable road to the point where delivery is requested. If no such road exists delivery will be made to the nearest point to which, in the opinion of the driver, the vehicle can safely proceed and unload. Except for use of a vehicle mounted crane, you will provide all necessary labour and equipment required to unload materials promptly, and will indemnify us against any cost claim loss or damage arising from unloading.
- c If you do not take delivery of goods tendered in accordance with the contract we shall be entitled to immediate payment in full for such goods. We may store such goods at your risk and you shall in addition to the purchase price pay all costs of storage and any additional costs incurred as a result of you not taking delivery.
- d On your request, we will within 3 months of delivery, provide evidence of delivery of goods ordered, such as a copy of a delivery note. If you do not raise any query about delivery within such period, the goods shall be deemed to have been delivered in accordance with your order.

RISK AND TITLE TO GOODS

- 7 The risk in the goods shall pass to you upon delivery.
- 8 a Until we have been paid in full the price of the goods and all other goods agreed to be sold by us to you for which payment is then due together (where applicable) with the costs of packaging and delivery plus any interest and charges thereon:
 - (i) We shall retain ownership of the goods, but you shall if required by us store the goods in such a way as clearly to show our ownership of them and you shall tell us immediately where the goods are situated.
 - (ii) You shall afford us access to the goods during normal business hours whether they are upon land occupied by your or your customers and you shall deliver the goods up to us at our request and allow us to remove them. For this purpose you hereby grant an irrevocable right and licence to our employees or agents to enter upon the said land with or without vehicles during normal business hours.
 - (iii) You may sell and deliver the goods to third parties in the ordinary course of your business, acting towards such third parties as a principal and not as our agent, but you shall hold all proceeds of sale on trust for us in a separate bank account, you hereby assigning to us all rights and claims which you may have against your customers arising from such sales until full payment is made as aforesaid.
- b The authority given to you under clause 8(a)(iii) will continue until we notify you otherwise or until the happening of any of the following events (whichever is earlier):
 - (i) any notice to you that an administrative receiver or other receiver or manager is to be or has been appointed in respect of your undertaking or a material part thereof or other property or assets;
 - (ii) any notice to you that a petition to wind you up is to be or has been presented to you under Section 124 of the Insolvency Act 1986 or otherwise or any notice to you of a proposal to pass a resolution to wind you up (including any proposal by you so to do);
 - (iii) a decision by you to make a voluntary arrangement or composition with your creditors or any notice to you and/or any of your creditors that a proposal for the same is to be or has been made;
 - (iv) you becoming unable to pay your debts as such expression is defined by the Insolvency Act 1986; or

(v) any notice to you that you are to be the subject of a petition for an administration order or the making of any administration order in respect of you; and you shall immediately notify us in writing upon the happening of any such event.

- 8 c On receipt of written notice from us or on the happening of any of the events set out in clause 8(b), your authority to sell our goods shall immediately be withdrawn and all such goods and products made there from shall immediately be delivered to us at your cost and risk.

LIABILITY

- 9 a You shall inspect the goods upon delivery. We will make good at our option by repair or replacement any defects in the goods due solely to defective workmanship or materials which are notified in writing to us; in the case of any defect discoverable upon reasonable examination, such notification must be made within 2 working days from the date of delivery and, in the case of any defect not discoverable upon reasonable examination, such notification must be made in writing within 2 working days of the date such defect is actually discovered provided that:
- (i) our above obligations do not extend to defects caused by wilful damage, negligence (other than by our employees or agents), fair wear and tear, alteration or repair of the goods without prior written approval, or incorrect storage, application, movement or installation;
 - (ii) we are not responsible either for the cost of removing any defective goods from any place where they are installed or fixed (or making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods unless this costs has been previously agreed in writing by one of our Directors; and
 - (iii) our above obligations only apply for twelve months from the date of delivery.
- b We will not accept liability for shortages in quantities delivered unless you notify us of any claim for short delivery within 2 working days of delivery. Our liability shall be limited making good the shortage.
- c Save as set out in these conditions and save for liability for death or personal injury resulting in our negligence and save for breach of our undertakings as to title implied by statute, all express or implied conditions, representations or warranties as to description, quality or fitness of the goods or otherwise are expressly excluded. We shall not be liable for any consequential, indirect or economic loss or for any loss of profits, business, revenue, goodwill or anticipated savings, (whether arising from breach of contract, tort, breach of statutory duty, misrepresentation or otherwise).
- d Where fine or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.
- e If you are a consumer (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) your statutory rights are not affected by these conditions.
- f On request, we will provide information about any guarantee offered by a manufacturer and available to you in respect of the goods.

MEASURES

- 10 We may supply goods in either metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric measure allowing for conversion.

PACKAGING AND WASTE

- 11 a We may charge for any special packaging to cover the cost of labour and materials. We will charge for pallets, crates and cases but charges will be credited in full if items are returned to us carriage paid and in good condition, within 7 days of delivery.
- b You will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licences relating to such waste. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this clause.

CANCELLATION OF ORDERS

- 12 a Subject to clause 12(b) we may at our discretion accept or reject the cancellation of any order after we have accepted it. If we decide to accept the cancellation of such order, this acceptance shall be on such terms as we specify. We will not accept the cancellation of an order for goods which are to be specially made or obtained nor will any allowances be made in respect of such goods where they are subsequently returned.
- b Where you are a "consumer" under a "distance contract", both as defined in the Consumer Protection (Distance Selling) Regulations 2000, you may cancel the order within 7 working days after the day the goods are delivered deteriorate or expire rapidly of cancellation where the goods are made to your specification or are personalised or are liable to deteriorate or expire rapidly.

- 12 b You must then either return the goods to the location from which they were delivered or request us to collect the goods; in the latter case you will be liable to pay our costs of collection. You will not have a right

RETURN OF GOODS

- 13 Subject to clause 12(b), we may at our discretion accept or reject the return of any goods which have been incorrectly ordered. If we decide to accept the return of such goods, this acceptance shall be on such terms as we specify and in particular we may charge you for the carriage and handling of such goods. We will not accept the returns of goods which are liable to deteriorate or expire rapidly.

FORCE MAJEURE CLAUSE

- 14 We shall be under no liability for any loss, damage, delay or expenses caused wholly or in part by Act of God, outbreak of war, civil commotion, governmental policies or restrictions or control, including, restrictions of export or import or other licences, trade or industrial disputes of whatever nature, whether or not such dispute involves us, our employees or agents, or by any other event whatsoever which is beyond our control, and in any such circumstance, we may omit goods from, or cancel your order, or postpone delivery of the goods ordered.

BANKRUPTCY OR INSOLVENCY

- 15 If,
- a You make a proposal for or enter into a scheme of arrangement or a composition with your creditors or fail to comply with a statutory demand for the repayment of a debt within the time allowed or become apparently insolvent, or
 - b where you are in an individual or, where you are a partnership, in the case of any individual partner) an application is made to the court under Part V111 of the Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for the administration of your estate pursuant to Part V1 of the County Courts Act 1984 or a bankruptcy petition relating to you is presented to the court or you are adjudged bankrupt, or
 - c (where you are a company) a petition for an administration order is presented to the court pursuant to Part II of the Insolvency Act 1986 or you pass a resolution or the court makes an order that you shall be wound up (otherwise than for the purpose of amalgamation or reconstruction) or a receiver or administrative receiver is appointed of any of your assets
 - d (where you are either a company or a partnership) circumstances arise which entitle the court to make a winding-up order, or
 - e (whether you are a company, a partnership or an individual) you take or suffer any similar action in consequence of debt, we may stop any goods in transit and suspend further deliveries and may forthwith terminate the contract without prejudice to the continuation of our rights hereunder and to any existing claims.

NON-WAIVER OF RIGHTS

- 16 The failure by either you or us to exercise or enforce any right conferred by the contract shall not be a waiver of any such right nor bar the exercise or enforcement of such right at any time thereafter.

HEALTH AND SAFETY

- 17 Certain products supplied by us could, if incorrectly used, give rise to risks to health and safety. Information in respect of such products is available from us. You undertake that you will ensure compliance so far as is reasonably practicable by your employees, agents and customers with any instructions given by us or the manufacturer and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of any person handling, using or disposing of them.

NOTICES

- 18 Any notices hereunder shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address. Any notice hereunder shall be deemed to have been delivered, if sent by post, 2 days after posting, and if sent by fax, on the next working day after transmission.

APPLICABLE LAW

- 19 a Subject to clause 19(b) the contract shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.
- b If you are domiciled in Scotland within the meaning of the Civil Jurisdiction and Judgements Act 1982, or the goods are delivered to your place of business or at your direction in Scotland, then the contract shall be governed by and construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish courts.