

TERMS AND CONDITIONS OF SUPPLY



1. **DEFINITIONS**

In these Terms and Conditions the following words shall have the following meanings:-

 - 1.1. "the Company" shall mean Interlevin Holdings Limited Company Registered in England and Wales Number 01792823 (and any subsidiary or related Company which supplies the goods) whose Registered Office is at 1 West Meadow Rise, Castle Donington, Derby DE74 2HL.
 - 1.2. "the Goods" shall mean all goods, materials, manuals, equipment and packaging supplied by the Company to the Customer whether or not manufactured or produced by the Company.
 - 1.3. "the Customer" shall mean any person with whom the Company contracts.
2. **MAKING THE CONTRACT**
 - 2.1. Any order issued by the Customer is only binding on acceptance by the Company. Any offer made by the Customer orally must be confirmed in writing by the Customer.
 - 2.2. All orders are accepted under these Terms and Conditions alone and supersede all previous Agreements and exclude any proposed Terms and Conditions in the Customer's Order.
 - 2.3. No variation of these Terms and Conditions is permitted unless expressly accepted by a Director of the Company in writing.
 - 2.4. No servant or agent of the Company has authority to make any representation or give any warranty in relation to the Goods and if any statement or representation has been made to the Customer by the Company, its servant or agents upon which the Customer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm, reject or clarify the same and submit a new estimate/quotation.
3. **VARIATION/CANCELLATION**
 - 3.1. No cancellation by the Customer is permitted except where expressly agreed by the Company in writing.
 - 3.2. Any variation in an order which is accepted by the Company shall entitle the Company to make an appropriate variation in the price and delivery times which shall bind the Customer.
 - 3.3. The Customer will in the event of agreed cancellation indemnify the Company in full against all expense and loss incurred up to the time of cancellation in accordance with the following formula namely:-
 - 3.3.1. The Customer cancels after the Goods have left the Company's warehouse but before they have been unpacked by the Customer or its agent a charge of fifteen percent (15%) of the invoice value will be charged plus any carriage charges incurred by the Company at the time of cancellation.
 - 3.3.2. If the Customer cancels after the Goods have left the Company's warehouse and the Goods have been unpacked by the Customer or its agent then a charge of twenty percent (20%) of the invoice value will be charged plus any downgrading amount necessary together with any carriage charges incurred.
4. **PRICE**
 - 4.1. Unless otherwise stated all prices are for the cost of the Goods alone ex works exclusive of VAT.
 - 4.2. All prices quoted are subject to revision or withdrawal by the Company without prior notice (until the Contract is made).
 - 4.3. The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported materials.
 - 4.4. Carriage, postage and packing may be charged extra.
5. **TERMS OF PAYMENT**
 - 5.1. All sums become due and payable under these Terms and Conditions Thirty (30) days from date of invoice to approved account holders only. To non-account holders, goods will only be released on receiving cleared funds.
 - 5.2. Time for payment shall be of the essence.
 - 5.3. The Company reserves the right to charge interest at four percent (4%) per annum above the Base Lending Rate of the Royal Bank of Scotland PLC on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 5.1.
- 5.4. If the Customer (being a Company) suffers distress or execution against its property, goes into liquidation, has a Petition presented for its winding-up or passes a Resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or re-construction or compounds or makes a voluntary arrangement with its creditors or has a Receiver or Administrative Receiver appointed over all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any composition or scheme of arrangement with its creditors (or carries out or suffers any analogous act or event under foreign law) or commits a material or serious breach of this Agreement (and in the case of such a breach being remediable fails to remedy it within Seven (7) days of receiving notice to do so) it will be deemed to have repudiated the Contract.
- 5.5. The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivery of any order.
- 5.6. Payment will not be effected until clearance of cheque or bill of exchange.
6. **DELIVERY**
 - 6.1. Delivery will be deemed to have been effected when the Goods are delivered to the Customer or order of the Customer or its Agents.
 - 6.2. Time of delivery is not of the essence.
 - 6.3. The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery (or by the future to make Goods ready for collection) on the due date.
 - 6.4. The Company reserves the right to make delivery by installments and to render a separate invoice in respect of each installment and such invoice shall be payable as in Clause 5.1.
 - 6.5. When delivery is by installment or if there be a delay in the delivery of any one or more installments for whatever reason this will not entitle the Customer to treat the contract as repudiated or to damages.
 - 6.6. Where delivery is refused by the Customer or is delayed, suspended or made by installments at the request of the Customer or where the Company is unable to deliver the Goods due to circumstances beyond its control, the Company on giving notification of readiness to deliver shall be entitled to treat the contract as fulfilled and place the Goods into store. Delivery will then be deemed to have taken place for invoicing and payment as in Clause 5.1 and the passing of risk. The Company at the Customer's request shall and in any event may, arrange insurance covering the major perils endorsing its own interest. The cost of storage and any insurance of the Goods shall be for the Customer's account.
 - 6.7. When the Company conveys the Goods the Customer shall be responsible for providing proper unloading facilities (including adequate plant and labour) and storage facilities.
7. **RISK AND PASSING OF TITLE**
 - 7.1. Goods supplied by the Company shall be at the Customer's risk immediately on delivery in accordance with Clause 6.1 and the Customer should therefore be insured accordingly.
 - 7.2. Property in Goods supplied hereunder will pass to the Customer when:
 - 7.2.1. the Goods the subject of this contract; and
 - 7.2.2. all other Goods the subject of any other contract between the Company and the Customer which at the time of payment of the full price of the Goods sold under this contract, have been delivered to the Customer but not paid in full, have been paid for in full.
 - 7.3. Until full payment has been received by the Company, the Customer shall hold the Goods in a fiduciary capacity for the Company in a manner which enables them to be identified as the Goods of the Company and the Customer shall immediately return the Goods to the Company should its authorised representative so request. All the normal incidents associated with a fiduciary relationship shall apply.
 - 7.4. The Customer's right to possession of the Goods shall cease if it does anything or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any assets or would entitle any person to present a Petition for winding-up.
 - 7.5. The Customer grants the Company an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Goods the property in which has remained in the Company under Clause 7 hereof. The Company shall not be responsible for and the Customer will indemnify the Company against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.
 - 7.6. The Customer must ensure that if the Goods are or become affixed to any land or building they shall be capable of being removed without material injury to such land or building and to take all necessary steps to prevent title to the Goods from passing to the Landlord (if any) of such land or building. The Customer warrants to repair and make good any damage caused by the affixation of the Goods to or their removal from any land or building and to indemnify the Company against all loss, damage or liability it may incur or sustain as a result of such affixation or removal.
 - 7.7. Notwithstanding Clause 7.3 hereof the Customer shall be permitted to sell the Goods to third parties in the normal course of business. In this respect the Customer shall act in the capacity of a Commission Agent and proceeds of any such sale shall be held in trust for the company in a manner which enables proceeds to be identified as such. The Company as Principal shall remunerate the Customer as Commission Agent a commission depending upon the surplus which the Commission Agent can obtain over and above the sum, stipulated under the original contract of supply, which will satisfy the Principal.

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8. LIEN AND STOPPAGE
- 8.1 Until the title in the Goods has passed to the Customer the Company has the right to withhold delivery in any of the circumstances mentioned in Clause 5.4.
- 8.2 When the title in Goods has passed to the Customer before payment for them is received by the Company in any of the circumstances mentioned in Clause 5.4 then the company has:-
- 8.2.1 A lien on the Goods so long as the Company is in possession of them;
- 8.2.2 A right of stoppage in transit; and
- 8.2.3 A right of resale
- 8.3 Nothing in this Clause shall affect the rights given to the Company by Sections 38-48 of the Sale of Goods Act 1979.
9. INSPECTIONS/SHORTAGES/DEFECTS
- 9.1 The warranties referred to in Clause 9.5 shall not apply to the Goods where the Goods are exported to or installed in countries outside the United Kingdom unless the Company has consented in writing.
- 9.2 The Customer is under a duty wherever possible to inspect the Goods on delivery or on collection as the case may be.
- 9.3 Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked "not examined".
- 9.4 Subject to Clause 10.1. The Company shall be under no-liability for any defects or shortages that would be apparent on careful inspection if the terms of Clauses 9.2 and 9.3 are not complied with, and, in any event, will be under no liability if a written complaint is not delivered to the Company within Seven (7) days of delivery detailing the alleged defect or shortage. Damage in transit by a carrier must also be notified to it within the time imposed by its contract, and noted on the delivery note.
- 9.5 Subject to Clause 9.4 and unless agreed in writing otherwise the Company warrants the equipment against defective parts for a period of Twelve (12) months from the date of installation or Fifteen (15) months from the date of invoice whichever is the shorter. In the event of a failure which is subject to the above warranty claim the Company is to be notified in writing within Seven (7) days and will replace the fully component and the Customer will be invoiced for the replacement. The faulty component is to be returned to the Company within Twenty One (21) days and subject to our Engineer's report confirming the fault the invoice for the replacement item will be credited.
- The above warranty is limited to the supply of components and does not allow for Engineer's travelling time or time spent in diagnosing a fault or labour in effecting a repair.
- The above warranty will not apply where work to the defective components is carried out by others or where the Goods are neglect or mis-used by the Customer.
- 9.6 Returns of either defective or non-defective Goods must be cleared with the Company before their return. In the case of defective Goods returned with prior approval for the Company to replace, these must be returned to the Company delivery paid. In the case of non-defective Goods approved for return, these must be returned to the Company works delivery paid and, in addition, the Company reserves the right to charge fifteen per cent (15%) handling charge.
- 9.7 Subject to Clause 10.1 in no event shall the Company be liable for loss or damage to consumables caused by a failure of the Goods and the Customer should, therefore, ensure that the Customer takes out suitable insurance.
- 9.8 Subject to Clause 10.1 in no event shall the Company be liable for loss or damage to consumables caused by a failure of the Goods and the Customer should, therefore, ensure that the Customer takes out suitable insurance.
10. LIABILITY
- 10.1 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the Statutory Rights of the Buyer are not affected by these Terms and Conditions.
- 10.2 Subject to Clause 10.1 the Company shall not be liable for any consequential loss or indirect loss suffered by the Customer whether this loss arises from breach of a duty in contract or tort in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations or consequential or indirect loss will be:-
- 10.2.1 loss of profits;
- 10.2.2 loss of contracts;
- 10.2.3 damage to property of the Customer or anyone else; and
- 10.2.4 personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence);
- 10.2.5 site labour costs including removal, replacement or making good or delay or disturbance to other works
- 10.3 Subject to Clause 10.1 the Company's total liability for any one claim or for the total of all claims (other than death or personal injury claims arising from the Company's negligence) arising from any one act or default of the Company's (whether arising from the Company's negligence or otherwise) shall not exceed the contract price of the sum of One Million Pounds (£1,000,000.00) whichever is the lesser.
- 10.4 Subject to Clause 10.1 the Customer will keep the Company indemnified against all actions, costs, claims and liability arising from faulty or unsuitable instructions given by the Customer or from allegations of breach of the Intellectual Property rights of a third party arising out of the Customer's instructions.
- 10.5 Subject to Clause 10.1 in the case of Goods not manufactured by the Company the Company gives no representation, warranty or condition whatsoever that the sale or use of the Goods will not infringe patent, copyright or other Intellectual Property rights of any other person, firm or company.
11. UK WEEE Regulations (S12006/3289) The Waste Electrical and Electronic Equipment Regulations 2006 as modified by any subsequent legislation).
- Future WEEE
- The Company sells products either retaining the Producer's obligations under the WEEE Regulations or with our customer taking on those responsibilities. In either case the customer must clearly state which of these options he requires and this must be documented.
- The Company will confirm this option on its order acceptance documents.
- The customer must agree to disclose this agreement to any subsequent purchaser(s) of this equipment, as required by the regulations.
- Historic WEEE
- The purchaser agrees to absolve the Company from its obligations under the UK WEEE Regulations which require the Company to be responsible for financing the collection, treatment, recovery and environmentally sound disposal of any product supplied before 13th August 2005, where a similar new product is being purchased.
- The Company will undertake the collection, treatment, recovery and environmentally sound disposal of any product supplied before 13th August 2005 (or outside the scope of the WEEE regulations) subject to payment of its current disposal fees.
12. FORCE MAJEURE
- 12.1 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control.
- 12.2 Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, look-outs, local, national or supra-national government action or regulations (U.K. or otherwise), delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities.
- 12.3 Should the Company be prevented from delivering in the above circumstances; it shall give the Customer written notice of this fact as soon as reasonably practicable after discovering it.
- 12.4 If the circumstances preventing delivery are still continuing Three (3) months after the Customer receives the Company's notice, then either party may give written notice to the other cancelling the contract.
- 12.5 If the contract is cancelled in this way, the Company will refund any payment which the Customer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Customer) but the Company will not be liable to compensate the Customer for any further loss or damage caused by the failure to deliver.
13. DOCUMENTATION
- Catalogues, technical circulars, price lists and other literature issued by the Company are for the Customer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.
14. PROTECTION OF INTELLECTUAL PROPERTY
- 14.1 If the trademarks, trade names, know-how, copyrights, design rights, goodwill, patents and all other proprietary rights ("the Intellectual Property") arising out of or existing in or upon the Goods or the documentation referred to in Clause 13 are the property of the Company, the Customer shall not cause or permit anything which may damage or endanger the Intellectual Property of the Company or the Company's title to it nor assist nor allow others to do so and shall maintain as confidential both during the Contract as well as all times thereafter all information relating to the Company the Goods and the Intellectual property.
- 14.2 The Customer shall notify the Company of any suspected infringement of the Intellectual Property.
- 14.3 The Customer shall not tamper with any markings or name plates or other indications of the source of origin of the Goods which may be placed by the Company or its suppliers on the Goods.
- 14.4 Intellectual Property which is the property of the Company is licensed on a non-exclusive basis to the Customer but such Licence shall automatically be revoked in the event that any of the circumstances mentioned in Clause 5.4 apply and in the event that payment is not made in accordance with Clause 5.
15. NOTICES
- Any notice to be served on either of the parties by the other shall be in writing and sent to the last known address of the recipient or to such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first-class prepaid letter, telex or facsimile transmission and shall be deemed to have been effectively served if by hand when delivered, if by first class post forty eight (48) hours after posting and if by telex or facsimile transmission when despatched.
16. ASSIGNMENT
- The Customer shall not assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior written consent of the Company.
17. PROPER LAW AND JURISDICTION
- The contract shall be governed by and construed in accordance with English Law (including English Conflict of Laws) and all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Courts.
18. HEADINGS
- The headings of the conditions are for convenience only and shall have no effect on the interpretation thereof.