

CONDITIONS OF SALE OF DURHAM DUPLEX

1. Interpretation

1.1 In these conditions:

- “Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller
- “Goods” means the Goods (including any instalment of the Goods or part of them) which the Seller is to supply in accordance with these Conditions
- “Seller” means Edward Turner & Son T/A Durham Duplex
- “Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller
- “Contract” means the contract for the purchase and sale of the Goods
- “Writing” includes telex, facsimile transmission and comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Sale

2.1 The Seller shall supply and the Buyer shall purchase the Goods in accordance with any verbal or written quotations of the Seller which is accepted by the Buyer or any verbal or written order of the Buyer which is accepted by the Seller subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer

2.2 No variation of the Conditions shall be binding unless agreed between the authorised representative of the Buyer and authorised representative of the Seller

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyers own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed

2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

3. Orders and specifications

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer and for giving the Seller all relevant information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms

3.2 The quantity quality and description of any specification for the Goods shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller)

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages costs claims and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Seller’s use of the Buyer’s specification

3.4 If the Goods are to be manufactured in accordance with specifications submitted by the Buyer to the Seller in circumstances where the Seller has to design new tooling to accommodate the Buyer’s specifications the Seller will retain copyright in connection with such new tooling configuration unless otherwise agreed in writing with an authorised representative of the Seller

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are to be supplied to the Seller’s specification which do not materially affect the quality or performance

3.6 No order which has been accepted by the Seller may be cancelled or varied by the Buyer except with the agreement in Writing by an authorised representative of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and the materials used) damages charges and expenses incurred by the Seller as a result of cancellation

4. Price of the Goods

4.1 The price of the Goods shall be the Seller’s quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as but without limitation foreign exchange fluctuation alteration of duties significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates quantities or

specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions

4.3 All prices quoted by the Seller are on an ex-works basis unless otherwise stated by the Seller

4.4 The price is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay to the Seller

5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods

5.2 The buyer shall pay the price of the Goods within 30 days of the end of the month in which the Seller's invoice was raised (the due date) notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payments will be issued only upon request.

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

5.3.1 cancel the contract or suspend any further deliveries to the Buyer

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 3 per cent per annum above HSBC Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6. Delivery

6.1 Delivery of the Goods shall be made by the Seller to the Buyer's premises or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place or collection by the Buyer from the Seller's premises (if agreed)

6.2 Any dates quoted for Delivery of the Goods are approximate only and the Seller shall not be liable for any delay in the Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence unless previously agreed by an authorised representative of the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer

6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to delivery any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

6.4 Where the Goods are manufactured to the Buyer's specifications in accordance with Clause 3.4 the Buyer must accept delivery of plus or minus 5% of the Contract amount payment shall be quantum meruit for the amount delivered at the Contract rate

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract

7. Risk and property

7.1 Risk of damage or loss of the Goods shall pass to the Buyer

7.1.1 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 and insurance has been raised in respect of such Goods; or

7.1.2 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

7.2 Notwithstanding delivery and the passing 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 in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due

7.3 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

7.4 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. The Seller is hereby granted a Licence to enter the Buyer's premises where the Goods are stored for the purposes of recovering possession of the Goods in accordance with this clause

7.5 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable

8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specifications at the time of delivery and will be free from defects in material and workmanship.

8.2 The above warranty is given by the Seller subject to the following conditions;

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller

8.2.5 Subject as expressly provided in these Conditions and except where the Goods are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

8.2.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not Delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of Delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If Delivery is not refused and the Customer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall accept no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract

8.2.7 Where any valid claim in respect of any of the Goods which is based in any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge or at the Seller's sole discretion but the Seller shall have no further liability to the Buyer

8.2.8 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or implied warranty condition or other term or any duty at common law or under express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions

8.2.9 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 reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:

8.7.1 Act of God explosion flood tempest fire or accident;

8.7.2 War or threat of war sabotage insurrection civil disturbance or requisition;

8.7.3 Acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental or parliamentary authority;

8.7.4 Strikes lock-outs or any other industrial actions or trade disputes (whether involving employees of the Seller or of other third parties);

8.7.5 Difficulties in obtaining raw materials fuel parts or machinery;

8.7.6 Power failure or breakdown in machinery;

9. Insolvency of Buyer

9.1 This clause applies if:

9.1.1 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

9.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or

9.1.3 the Buyer ceases or threatens to cease to carry on business or

9.1.4 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

9.1.5 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract without any liability to the Seller 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

10. Export Conditions

10.1 The Buyer shall hold whatever import licence and/or exchange permit and/or other official permission as is necessary to import and pay for the Goods in the currency contracted for and invoiced

10.2 The Buyer shall supply the Seller with the reference number and expiry date of any such official permit or states that no such permit is required

10.3 The Buyer shall supply complete particulars for the declarations to appear on the invoices and supporting documentation. If the Buyer fails to supply sufficient particulars the Seller shall not be responsible for possible fines or differences in rates of duties or other consequences arising from a faulty declaration such fines are for the Buyer's account

10.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the Country of destination and for the payment of any duties thereon

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that 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 the notice

11.2 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

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

11.4 The Contract shall be governed by the laws of England and Wales and the parties agree to jurisdiction of the Courts of England and Wales