

STANDARD TERMS AND CONDITIONS OF SALES

1. FORMATION AND INCORPORATION

(1) This contract shall only be concluded when Minerelle (The "Seller") provides an Acknowledgement of an Order to the Buyer or in the event of Goods being dispatched. Any contract for the supply of goods being conditional upon acceptance of the Sellers terms given to the Buyer (in whatever form the same may be expressed) is given subject to these Conditions and does not constitute an offer to sell any goods to the Buyer. Subject to the above, any contract for the supply of goods given to the buyer remains open for acceptance for twenty-eight days from this date.

(2) These conditions (which such special conditions are endorsed upon the face hereof) are the only conditions upon which the Seller is prepared to deal with the Buyer and they shall govern this contract to the entire exclusion of any other express or implied conditions, whether by any law or otherwise to the maximum extent permitted. They may only be modified, varied or agreed in writing and shall be signed on behalf of the Seller by a company director.

2. PRICE AND ESCALATION

(1) The price of each consignment of goods shall be that expressed on the face hereof and is not subject to the addition of Value Added Tax.

(2) The price on the face hereof is based on the cost of producing or acquiring the goods (including but not limited to the costs of labour, raw materials, transport and overheads). The Seller reserves the right, by notice to the Buyer, to increase the price so expressed in the event of increases in any of the foregoing costs between the date on the face hereof and the date on which any consignment of the goods is delivered to the Buyer. In the event of any dispute arising as to such increased price, The Buyer has the right to terminate all outstanding orders.

3. PAYMENT

(1) Unless the Seller otherwise agrees, payment will be made by the Buyer for each consignment of the goods at time of placing order. In the event that credit terms are offered, payments shall be made within but not later than 30 days net monthly, time being of the essence for purposes of payment from the date of the Sellers invoice for such consignment and without deduction, counterclaim or set-off. Payments shall be made by the Buyer by any method agreed by the Seller to an office or bank designated by the Seller.

(2) If any payment that is to be made hereunder by the Buyer to the Seller is overdue, interest may be chargeable thereon as well as before judgment at a daily rate equivalent to the higher of 2% above the Retail Prices Index or at annual rate of 4% above the Bank of England Base Rate and any accrued interest from time to time applicable, until the sum due is paid.

4. DELIVERY & COLLECTION

(1) The seller shall arrange for delivery of each consignment of the goods to a place and or in the manner, designated by the Buyer when placing the order.

(3) Unless otherwise expressly agreed in writing with the Buyer any delivery times specified by the Seller in its quotation or otherwise are business estimates only and are not guaranteed. The Seller will not be liable to the buyer for any loss or damage sustained by the Buyer as a cause of the Seller's failure to comply with such delivery times. It is an express provision that "time for delivery" shall not be of the essence of the contract.

5. INTITAL DEFECTS

(1) The Buyer may only claim in respect of any breach of contract on the part of the Seller which is apparent on a reasonable visual inspection of the goods if that claim is made upon the Seller within 48 hours of delivery and is confirmed in writing within 5 days of delivery.

(2) If the quantity delivered is less than the contract quantity, the Buyer shall only be entitled at the Seller's option, to a further delivery of goods.

(3) If the quantity delivered exceeds the contract quantity the Buyer shall only be entitled to reject the excess or to retain the whole and make a further payment at the contract rate.

(4) In any event, the Buyer shall be deemed as having accepted any consignment of the goods if it retains them for longer than seven days after their delivery.

6. STORAGE

The Seller shall be entitled to store the goods at their own premises or elsewhere if the Buyer (a) fails to collect or take delivery of the goods or (b) is guilty of any act or omission which precludes the Buyer from Collecting or from the Seller despatching the goods. The Seller shall be entitled to recover such costs as an indemnity for costs of and in connection with storage, insurance and handling. Such costs therefore (including the cost of any insurance to the full value in respect of the goods) or until such risk will pass from the Seller will be advised to the Buyer by the Seller and shall be invoiced separately from any other services or goods supplied.

7. RISK

- (1) Risk of loss or damage to the goods shall pass to the Buyer from the time of delivery.
- (2) The property of the goods shall not pass to the Buyer until the whole of the amount invoiced has been paid in full and until payment the Buyer will hold the goods to the order of the Seller and shall prominently identify the goods as being the property of Seller and not permit any encumbrance to be taken over them under this contract and any other debt due to the Seller from the Buyer in contract
- (3) The whole of the amount invoiced shall not be treated as paid until the whole amount invoiced is available as cleared funds in the nominated bank account of the seller
- (4) If the Buyer shall sell, apply, incorporate or otherwise dispose of the goods it shall hold on trust for the Seller and if so requested by the Seller, place in a separate bank account, the value of each consignment. If the goods have been applied to or incorporated into any other goods for the whole, or just a portion of the proceeds of sale, provided that the Buyer shall have no authority to enter into any contract for sale on behalf of the Seller and any such contract shall accordingly be concluded in the name of the Buyer.
- (5) The Seller may at any time revoke the power of the Buyer to apply use or sell the goods by notice to the Buyer.
- (6) The power of the Buyer to apply use or sell the goods shall automatically cease if a Receiver of Administrative Receiver (as defined in the insolvency Act 1986) is appointed over any of the assets in its undertaking or if a winding-up order is made against it or if it shall go into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or it shall call a meeting of or make any arrangement or composition with its creditors or an administration order (as defined in the insolvency Act 1986) is made against it.

8. ADDITIONAL TERMS ONLY RELATING TO CONSUMERS

(1) Once a Contract has come into existence between The Seller and a Consumer, The Seller shall be entitled to cancel the Contract if The Seller has not delivered Goods to a Consumer within 21 days of the Consumer's order. The Consumer may cancel the Contract and The Seller will refund any money paid.

(2) Following collection or delivery, Consumers have the right to cancel a Contract and receive a refund. The Consumer must inform The Seller within 5 days, commencing on the day after the Goods are delivered to the Consumer. If the Consumer chooses to cancel, any goods supplied, must be returned at the Consumer's cost and risk. It is an express condition that the Consumers will take reasonable care of the Goods.

8.3 Consumers are required to inspect the Goods for the purpose of ascertaining whether or not at the time of delivery they are damaged or defective. Consumers are required to notify The Seller as soon as is reasonably practical in the event that the Goods are found on inspection to be defective or damaged. The Seller will then arrange for the return of the Goods at no cost to the Consumer. If the Goods are found to be defective by fault in manufacturing or damaged prior to delivery to the Consumer, The Seller will repair or replace the Goods or refund the price paid by the Consumer.

9. SUSPENSION AND TERMINATION

(1) If the Buyer is in default of performance of its obligations to the Seller, or if the Seller has reasonable doubts with respect to the Buyer's performance of its obligations to Seller and Buyer fails to provide Seller with adequate assurance (such as by means of ongoing credit approval) of the Buyer's performance before the date of scheduled delivery or collection and in any case within (30) days of Sellers demand for such assurance; or if the power of the Buyer is revoked under sections 7.6 then, without prejudice to any other rights of Seller, Seller may by notice in writing forthwith suspend its performance or terminate Sellers Confirmation for outstanding contracts unless Buyer makes such payment for Goods on a cash in advance basis or provide adequate assurance of such payment for Goods to Seller; without any intervention of courts being required and without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination

9. SUSPENSION AND TERMINATION (Cont.)

(2) In any such event of (8.1) all outstanding amounts due to the Seller shall become due and payable immediately in proportion to the quantity of Goods delivered or collected by the Buyer and not paid for or not repossessed by Seller

(3) Upon the determination to revoke the power of the Buyer to apply use or sell the goods, the Buyer shall immediately place the goods at the disposal of the Seller who shall be entitled to enter upon any premises of the Buyer for the purpose of removing them and to remove them. An irrevocable licence is hereby granted by the Buyer to the Seller to enter any of the premises of the Buyer for the purpose aforesaid including any third party premises and shall at all times indemnify the Seller for any such costs and or damages.

10. RETENTION OF TITLE

(1) In the event of termination the basis of paragraph 7.6 of these Conditions, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate return of the goods and all such amounts held in trust (7.4) taking repossession of any goods which have not been paid for at the cost of the Buyer for which it may invoke retention of title.

(2) The Buyer will take all measures, including identifying as “property of Seller” and not permit any encumbrance to be taken over them to ensure that Seller's title is in no way prejudiced.

(3) Where The Seller demands return of the goods and all such amounts as held in trust, The Buyer shall procure an irrevocable licence made available for the Seller to immediately enter upon all or any of the premises where the goods are or may be located and shall indemnify the Seller for any damage caused or suffered, including all reasonable costs relating to the recovery of the goods which shall be for the account of Buyer.

11.a. WARRANTY

The Seller warrants that, insofar as the goods are of its own manufacture, they shall be free from material defects in workmanship or materials at the time of collection or delivery for a period of 1 month. If any goods do not conform to that warranty the Seller will at its absolute option make good by repair or replacement, in full or in part, any products which can be shown to have failed by reason of defects in manufacture, that is subject to fair wear and tear, which is hereby excluded, provided that:-

1. The products are properly used for their intended purpose or application.
2. Proof, date and cost of purchase must accompany any claim under this warranty
3. The liability of the Seller shall in no event exceed the purchase price of the goods, save death, personal injury or fraud, in which case to the maximum extent permitted by law.
4. Where The Seller elects to repair or replace, under the terms of this warranty, products will be repaired or replaced up to the original purchase value.
5. The foregoing warranty is conditional upon:
 - (a) The Buyer giving written notice to the Seller of the alleged defect in goods.
 - (b) The Buyer affording the Seller a reasonable opportunity to inspect the goods;
 - (c) The Seller further undertakes insofar as the goods are not of its own manufacture, it will recover from its supplier in respect of any defect in workmanship or materials notified to it and will pass on to the Buyer (to the extent it is able to) the benefit of any guarantees or indemnities given to it in respect thereof by its suppliers.
 - (d) Performance by the Seller up to the maximum value permitted shall constitute an entire discharge of the Seller's liability under this warranty.

11.b. EXCLUSIONS

(1) Save as provided above hereof and or the “Consumer Rights Act 2015”, The Seller shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever caused which may be suffered by the Buyer except by way of death personal injury or fraud, in which case, to the maximum permitted by law.

(2) Without prejudice to the generality of sub-paragraph (1) hereof all recommendations and advice given by or on behalf of the Seller to the Buyer as to methods of storing, applying or using the goods, the purposes to which the goods may be applied and the suitability of using the goods in any process or in conjunction with any other materials are given without liability on the part of the Seller its servants or agents

(3) Information and recommendations provided are believed to be accurate at the date of issue. The Seller makes no representation or guarantee, whether express or implied (to the maximum extent permitted by law) with respect to the completeness thereof.

(4) The Buyer is solely responsible for determining the suitability of the product for the intended use.

12. PATENT & INTELLECTUAL PROPERTY RIGHTS

(1) The Buyer warrants that any instructions furnished or given by the Buyer shall not be such as will cause the Seller to infringe any letters patent, utility model registered design right of confidence or trademark in execution of the Buyer's order, and the Buyer shall indemnify the Seller against the costs, claims and expenses incurred by the Seller in respect of such infringement or alleged infringement.

(2) All drawings, photographs, illustrations, specifications, performance data, dimensions, weights, trade names, web site domain names and logos, where the seller owns the Intellectual Property Rights, remain the property of the Seller. Where the Seller allows these to be used for the legitimate purposes of promoting the Sellers products, they shall be returned immediately upon request by the Seller.

13. HEALTH AND SAFETY

The Buyer will on or before delivery of the goods, if so requested by the Seller, enter into a written undertaking to take such steps as may be specified to the Buyer by the Seller, and set out in such undertaking relating to the safe and proper use of the goods without risk to health. The Buyer shall indemnify the Seller in respect of any liability, monetary penalty, or fine in respect of, or in connection with, the goods incurred by the Seller under the "Health and Safety at Work Act 1974" or any statutory modification or re-enactment thereof or any regulations, orders or directions made thereunder.

14. DRAWINGS & CONFIDENTIALITY

(1) All drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, whether contained in the contract or made by way of representation, have been provided by the Seller in the belief that they are as accurate as reasonably possible, but they do not constitute a description of the goods, shall not be taken to be representations made by the Seller, and are not guaranteed to be accurate.

(2) Where any drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, whether contained in the contract or made by way of representation, have been provided by the Buyer, The seller excludes all responsibility for any specifications.

(3) Drawings, specifications and other information submitted to the Buyer by the Seller are confidential and must not be disclosed to any other party. No confidential information will be sent prior to contract or until a separate confidentiality agreement is signed. Any documents must be returned immediately upon request to the Seller if its quotation is not accepted by the Buyer.

15. ALTERATIONS AND MODIFICATIONS

(1) The Seller may supersede, materially alter or abandon the design or type of the goods contracted for, and may substitute another design or type. In exercising this right, the Seller shall give written notice to the Buyer and the Buyer may, within 14 days after such notice is given, terminate the contract by giving notice to the Seller. If the contract is so terminated, no claim for loss or damage may be made.

(2) If in the absolute opinion of the Seller, there is no design or type, which could reasonable be substituted under sub-clause (1) of this clause the Seller's obligation to complete performance of the contract shall be suspended until such time as a substitute therefore can be found and becomes available. In the event that none can be found within 6 weeks, The Seller shall have the option to immediately terminate the contract giving 1 weeks notice, without liability for any claim for loss or damage, save that any deposits or payments conferred will be returned to The Buyer.

(4) Where the Buyer has specified that the goods shall be of a certain colour or size, such specifications or description shall be subject to reasonable commercial and or technical variation, other than where previously agreed between the Parties in writing.

16. WAIVER

No indulgence or failure by the Seller to enforce any of its rights shall constitute a waiver of such right or preclude the Seller from thereafter exercising the same.

17. FORCE MAJEURE

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's control. Should any such event occur the Seller (at its absolute discretion) may terminate without notice or suspend this contract without incurring any liability for any loss or damage thereby occasioned save the return of any deposits or payments conferred to the Seller.

18. ASSIGNMENT

This contract is personal to the Buyer and may only be assigned by it with the prior written consent of the Seller.

19. GOVERNING LAW

This contract is governed by Scottish Law and the Scottish Courts (to the jurisdiction of which the Buyer hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes arising out of it.

20. General

(1) This Contract contains all the terms which The Seller and the Buyer have agreed in relation to the Goods and/or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of The Seller which is not set out in the Contract. Nothing in this Condition will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

(2) The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

(3) For the avoidance of doubt should there be any conflict between the terms and conditions of sale set out in this document and any special terms attached to them, then, the special terms herein shall prevail.

(4) Any notice to be served under the Contract must be in writing and must be delivered or sent by registered or tracked post. Any notice shall be deemed served the time of delivery and signed by the recipient.

(5) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.