

# CONDITIONS OF SALE

## 1.0 INTERPRETATION

### 1.1 In these Conditions:—

- BUYER** means the person who accepts Seller's quotation for the sale of the Goods or whose order for the Goods is accepted by Seller.
- GOODS** means the goods (including any instalment of the goods or any parts of them) which Seller is to supply in accordance with these Conditions.
- SELLER** means Bonus Electrical Limited
- CONDITIONS** means the 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 Buyer and Seller.

## 2.0 BASIS OF SALE

- 2.1** Unless otherwise expressly agreed in writing signed by a Director of Seller these Conditions shall govern all contracts between Buyer and Seller to the exclusion of any other terms and conditions. No condition, warranty or other term which Buyer may seek to impose shall apply to Seller.
- 2.2** No order submitted by Buyer shall be deemed to be accepted by Seller unless and until confirmed in writing by Seller's authorised representative.
- 2.3** All descriptive matter, dimensions, weights or specifications, set out in brochures, catalogues, price lists and all advertising material are approximate and by way of identification only and shall not form part of this contract or give rise to any independent or collateral liability of any kind. All prices quoted therein shall be subject to alteration or withdrawal from time to time without notice.
- 2.4** Seller reserves the right to make any changes in the Specification of the Goods which do not materially affect their quality or performance.

## 3.0 PRICE

- 3.1** The price for the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by Buyer.
- 3.2** Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the price to reflect any increase in the cost to Seller which is due to any factor beyond the control of Seller (such as, without limitation, any increase in the costs of labour, materials or other costs of manufacture).
- 3.3** Except as otherwise stated under the terms of any quotation or in any price list of Seller, and unless otherwise agreed in writing by Buyer and Seller, all prices given by Seller include the cost of delivery to Buyer within Seller's van delivery area full details of which are available on request. In all other cases, Buyer shall be liable to pay costs of transport, packaging and insurance.
- 3.4** The price is exclusive of any applicable Value Added Tax, which Buyer shall be additionally liable to pay to Seller.

## 4.0 TERMS OF PAYMENT

- 4.1** Unless otherwise agreed in writing, Seller shall be entitled to invoice Buyer for the price of the Goods on or at anytime after delivery of the goods unless the Goods are to be collected by Buyer or Buyer wrongfully fails to take delivery when the Goods are ready, in which event the Seller shall be entitled to invoice Buyer for the price at anytime after Seller has notified Buyer that the Goods are ready for collection or delivery.
- 4.2** Unless otherwise agreed Buyer shall pay the price of the Goods within 30 days of the date of Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to Buyer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will only be issued on request. Without prejudice to the generality of this clause, Seller may at its discretion extend to certain buyers terms of credit such that payment shall be due in cash in one month one month from the date of invoice ("The Credit Payment Due"). To apply for a credit account, Buyer must supply two current trade references and one bank reference and state the limit of credit required. Seller may at its discretion refuse to grant credit terms or grant terms for a lower limit of credit than that requested. Any credit terms may be withdrawn by notice in writing from Seller at any time.
- 4.3** If Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to Seller, Seller shall be entitled to:—
- 4.3.1** cancel the contract or suspend any further deliveries to Buyer, and/or
- 4.3.2** appropriate any payment made by Buyer to such of the Goods (or goods supplied under any other contract between Buyer and Seller) as Seller may think fit (notwithstanding any purported appropriation by Buyer), and / or
- 4.3.3** charge Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% percent per annum above base rate from time to time of Sellers bank, until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

## 5.0 DELIVERY

- 5.1** Unless otherwise agreed delivery shall be made by Seller delivering to Buyer or by Buyer collecting Goods at Seller's premises at anytime after Seller has notified Buyer that the Goods are ready for collection. Any dates quoted for the delivery of the Goods are approximate only and 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 Seller in writing signed by a Director. The Goods may be delivered by Seller in advance of the quoted date upon giving reasonable notice to Buyer.
- 5.2** If goods are delivered to Buyer otherwise than at Seller's place of business Goods damaged in transit or not delivered in accordance with its advice note shall be repaired or replaced as necessary by Seller PROVIDED:
- 5.2.1** if it is alleged that short delivery has occurred Buyer gives details to Seller within 2 days of receipt of the Goods together with such information as is required by Seller to identify the alleged shortage including the advice note number case number and condition of packing.
- 5.2.2** in cases of damage or non-delivery Buyer gives to Seller written notice of such damage or non-delivery within 2 days of receipt of the advice note or such time as will enable Seller to comply with the carrier's conditions of carriage (whichever shall be the shorter) and (where delivery is not by Seller) the carrier accepts liability or the damage and/or shortfall.
- 5.3** Where Goods are collected from Seller's premises by or on behalf of Buyer any representative of Buyer shall be deemed to act as an agent for Buyer with authority to bind Buyer in relation to the Goods and any contract based on these conditions. At the request of Buyer, any such representative will provide written authority so to act signed by Buyer or a director thereof.
- 5.4** Seller reserves the right to deliver Goods in instalments. Where Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by Buyer in respect of any one or more instalments shall not entitle Buyer to treat the contract as a whole as repudiated.
- 5.5** If Buyer fails to take delivery of the Goods or fails to give Seller adequate instructions for delivery of the Goods at the time stated there for (otherwise than by reason of any cause beyond Buyer's reasonable control or by reason of Seller's fault) then, without prejudice to any other right or remedy available to Seller, Seller may:—
- 5.5.1** store the Goods until actual delivery and charge Buyer for the reasonable costs (including insurance) of storage, or
- 5.5.2** sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge Buyer for any shortfall below the price.

## 6.0 RISK AND PROPERTY

- 6.1** Risk of damage to or loss of the Goods shall pass to Buyer:—
- 6.1.1** in the case of Goods to be delivered at Seller's premises, at the time when Seller notifies Buyer that Goods are available for collection, or
- 6.1.2** in the case of Goods to be delivered otherwise than at Seller's premises, at the time the Goods are handed to a carrier for delivery to Buyer, or if delivered by Seller, at the time of delivery. If Buyer wrongfully fails to take delivery, risk shall pass to Buyer at the time when Seller has tendered delivery of the Goods.
- 6.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to Buyer until 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 Seller to Buyer for which payment is then due.
- 6.3** Until such time as the property in the Goods passes to Buyer, Buyer shall hold the Goods as Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of Buyer and third parties and properly stored, protected and insured. Until that time Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.4** Until such time as the property in the Goods passes to Buyer Seller shall be entitled at any time on reasonable notice to enter upon any premises of the Buyer or any third party where the Goods are stored and remove and re-possess the Goods.
- 6.5** Buyer shall not be entitled to pledge or in anyway charge by way of security for any in debtiness any of the Goods which remains the property of Seller.

## 7.0 WARRANTIES

- 7.1** Subject to these Conditions, Seller warrants that at time of delivery the Goods will correspond with their specification PROVIDED Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design, or specification supplied by Buyer. Where Seller advises Buyer on the selection of the Goods, reasonable care and skill will be exercised in that selection.
- 7.2** It is for Buyer to satisfy itself that the Goods are fit for the purpose for which they are intended, whether or not that purpose has been communicated to Seller. Subject to Clause 7.1 and with the exception of the condition and warranties implied by section 12 of the Sale of Goods Act 1979 all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Goods are hereby excluded to the fullest extent permitted by law.
- 7.3** Without prejudice to the provisions of Clause 5.2, any claim by Buyer which is based on any defect in the Goods or their failure to correspond with specification shall be notified to Seller within 14 days from date of delivery. If Buyer does not notify Seller within that period Buyer shall be deemed to have accepted the Goods.

## 8.0 RETURNED GOODS

- 8.1** Seller may in its absolute discretion:—
- 8.1.1** refuse to accept return of the Goods unless Buyer produces the original Purchase Order Number, a copy of the original Purchase Order and the date of the relevant invoice
- 8.1.2** require Buyer to give an adequate written description of the reason for returning the goods
- 8.1.3** refuse to issue a credit note in respect of any returned Goods unless and until Seller has received from the manufacturer of the returned Goods notice that the manufacturer accepts the return of the Goods if the goods are believed to be defective and will refund to Seller the price thereof
- 8.1.4** refuse to accept the Goods unless Buyer returns the goods to the branch of the Seller where the original purchase was made
- 8.1.5** refuse to accept the Goods if the Goods are not returned in the original packaging and in boxed quantities
- 8.2** Seller may permit Buyer to return to Seller Goods which comply with specification but which are surplus to Buyer's requirements. Seller may in its absolute discretion refuse to accept the return of any Goods, or charge a handling charge in respect of any returned Goods.
- 8.2.1** In any event, Seller shall not accept return of any Goods unless Buyer notifies Seller within 2 working days from the date of delivery that it wishes to return the Goods, and produces a copy of the original Purchase Order together with the Purchase Order Number and date of the order. Seller will not in any circumstances accept the return of Goods which are listed in the Seller's price list but are not normally stocked by Seller.

## 9.0 LIABILITY

- 9.1** The following provisions set out Seller's entire Liability (including any Liability for the acts and omissions of its employee's agents and sub-contractors) to Buyer in respect of:
- 9.1.1** any breach of its contractual obligations arising under this agreement; and
- 9.1.2** any representation statement or tortious act or omission including negligence arising under or in connection with this agreement (referred to in this clause as an 'Event of Default')

AND THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.

### 9.2 Seller's liability to Buyer for:

- 9.2.1** death or injury resulting from its own negligence or that of its employees agents or sub-contractors; and
- 9.2.2** all damage suffered by Buyer as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances shall not be limited.
- 9.3** Subject to the provisions of clause 9.2 above Seller's entire liability in respect of any Event of Default shall be limited (at the absolute discretion of Seller) to replacing the Goods the subject of the contractor paying to Buyer damages of an amount equal to the price thereof.
- 9.4** Subject to clause 9.2 above Seller shall not be liable to Buyer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by Buyer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or Seller had been advised of the possibility of Buyer incurring the same.
- 9.5** If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 9.6** The Buyer hereby agrees to notify the Seller promptly of, and to afford Seller not less than 14 days in which to remedy, any Event of Default hereunder. The 14 day period shall commence on the date the Seller receives the Buyer's notice.
- 9.7** Except in the case of an Event of Default arising under clause 9.2 above Seller shall have no liability to Buyer in respect of any Event of Default unless Buyer shall have served notice of the same upon Seller within 90 days of the date of the contract of which these Conditions form part.
- 9.8** Nothing in this clause 9 shall confer any right or remedy upon the Buyer to which it would not otherwise be legally entitled.
- 9.9** Seller shall not be liable to Buyer or deemed to be in breach of 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 were due to any cause beyond Seller's reasonable control.

## 10.0 INDEMNITY

- 10.1** Buyer warrants to Seller that:—
- 10.1.1** it will notify Seller of any defect in the Goods in accordance with clause 7;
- 10.1.2** it will use the Goods only for the purpose for which they are intended;
- 10.1.3** (where appropriate) it will install the Goods in accordance with the manufacturer's instruction or good industry practice.
- 10.2** Buyer indemnifies Seller against all loss damages costs and expenses awarded against or incurred by Seller as a result of a claim by any third party that the Goods were defective to the extent that any claim results from any breach by Buyer of its obligations under clause 9.1.

## 11.0 INSOLVENCY OF THE BUYER

- 11.1** This clause applies if:—
- 11.1.1** 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 purpose of amalgamation or reconstruction); or
- 11.1.2** an encumbrance takes possession, or a receiver or receiver and manager or administrator is appointed, of any of the property or assets of Buyer; or
- 11.1.3** Buyer ceases, or threatens to cease, to carry on business; or
- 11.1.4** Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to Buyer and notifies Buyer accordingly.
- 11.2** If this clause applies then, without prejudice to any other right or remedy available to Seller, Sellers hall be entitled to cancel the contract, without any liability to Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.
- 12.0 GENERAL**
- 12.1** 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.
- 12.2** No waiver by Seller of any breach of the contract by Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the reminder of the provision in question shall not be affected thereby.
- 12.4** The contract shall be governed by the Laws of England.