

CONDITIONS OF SALE



The following Standard Conditions of Sale shall govern all transactions except as otherwise specifically agreed in writing between the person, firm, company or other organisation to whom the goods are sold ("the Buyer") and The British Rototherm Co.Ltd. its successors and assigns ("the Seller").

1. Quotations

All quotations and tenders are given by the Seller on condition that the Seller shall not be bound until it has communicated its written acceptance of the Buyer's order. All orders for delivery in the U.K. will be subject to a nett minimum order charge of £50.00. All orders for export from the U.K. will be subject to a nett minimum order charge of £100.00.

2. Cost Variation

Except where a price is expressly stated to be 'fixed' by the Seller on its written acceptance of the Buyer's order any price quoted by the Seller or comprised in the order or contract is provisional only and the actual price to be paid by the Buyer shall be the Seller's price applicable at the date of despatch.

3. Payment

(a) Where no other terms are agreed in writing, all orders will be treated on a pro forma basis. For approved account holders invoices are nett and payable within 30 days of the date of invoice or presentation of shipping documentation (whichever is the earlier).

(b) In the event that payment is not made within the time stipulated in clause 3(a) above the Seller shall have the right to charge interest at the rate of 5% above the base rate from time to time in force of Barclays Bank., Cardiff, until such payment is received by the Seller in full.

(c) If the Buyer shall fail to pay any amount when it is due under this or any other contract with the Seller, then the Seller shall have the right (without prejudice to any of its other rights against the Buyer) on notice in writing being given to the Buyer, to treat the purchase price that is unpaid on all goods invoiced or despatched by the Seller as having become forthwith due and payable by the Buyer and in substitution for the provision contained in Clause 3(a) above.

4. Value Added Tax

All prices quoted or accepted are exclusive of Value Added Tax ("V.A.T.") and the contract price shall be such prices plus V.A.T.

5. Goods of the Contract

The Seller shall not be bound by any oral condition, warranty or representation given or made on its behalf unless confirmed by the Seller in writing, nor by any express or implied term, condition or warranty, whether arising by statute or common law or by usage, or custom, except as expressly provided in writing by the Seller

6. Contracts

The Seller shall have the option (without prejudice to any of its other rights against the Buyer) by notice in writing to the Buyer to rescind any contract between the Seller and the Buyer, or to suspend delivery in the following events:

- (i) should any sum owing by the Buyer to the Seller be overdue, whether under the same or any other contract;
- (ii) should the Buyer be in breach of any term of the same or any other contract with the Seller; or
- (iii) should the Buyer enter into any composition, or arrangement with or for the benefit of its creditors, have a receiving order in bankruptcy made against him or (if a corporate body) should it have a resolution passed or a petition presented to wind up its business (other than for the bona fide purpose of amalgamation or reconstruction) or if a receiver is appointed over its undertaking, property or assets or any part thereof, or if in the reasonable opinion of the Seller the Buyer is for any reason unable to pay its debts.

7. Delivery

(a) If no time for delivery is specified in the Contract, the Buyer shall be bound to accept the goods when they are ready for delivery by the Seller.

(b) The risk in goods contracted to be sold by the Seller shall pass to the Buyer (or to such person whom the Buyer may reasonably direct) when the goods (or any part thereof when there is more than one delivery under the Contract) leave the Seller's premises. Any complaint of short delivery or of damaged goods in transit must be notified within 24 hours of receipt of goods and confirmed in writing at that time by the Buyer to the Seller and any complaint of failure to deliver the goods invoiced must be so notified within 7 days of the date of invoice.

(c) Where the Contract involves more than one delivery if default is made in payment on the due date, or in respect of any condition hereunder, or in respect of any one delivery, the Seller shall at its option and without prejudice to any rights the Seller may have hereunder or otherwise, be entitled to treat the Contract as repudiated and to claim damages accordingly. For the purposes of this Clause 7 each delivery will constitute a separate contract and any failure or defect in any one delivery will not vitiate the contract in respect of the remaining deliveries.

(d) Any time or date for delivery stated by the Seller is an estimate only and the Seller shall not accept any liability whatsoever for any loss or damage loss of business or profits or any consequential loss howsoever arising whether directly or indirectly from delay or failure of delivery however caused.

8. Ownership

The Seller and the Buyer expressly agree that until the Seller has been paid in full (including any interest charged hereunder) for the goods comprised in the Contract that:

(a) the goods comprised in the Contract shall remain the property of the Seller save as provided herein;

(b) the Seller may recover the goods (but excluding any goods ownership of which has already passed to the Buyer subject to these conditions) at any time from the Buyer if in the Buyer's possession or control if the amount outstanding from the Buyer to the Seller in respect of the goods supplied has not been paid in full and for that purpose the Seller, its servants, representatives, and agents may enter upon any land or buildings upon which the goods are situated to recover the goods; provided that if the Seller shall resell the goods so recovered, or any part thereof, the Buyer shall forthwith pass without deduction any proceeds received by him when reselling the goods provided further that the Seller shall give the Buyer credit for any sum received by the Seller in excess of the unpaid price (including any interest charged hereunder) of such goods;

(c) the Buyer may dispose of the goods in the ordinary course of its business as principal (but any warranties, conditions, or representations given or made by the Buyer to any third party shall not be binding on the Seller who shall be indemnified by the Buyer with respect thereto) and may pass good title in the goods to a third party being a bona fide purchaser for value without notice of the Seller's rights.

(d) if the Buyer incorporates the goods into other products (with the addition of its goods or those of others) or uses such goods as material for other products (with or without such additions) the property in those other products is upon such incorporation or use and by that event transferred to the Seller and the Buyer will store the same for the Seller in a proper manner without charge to the Seller; in the event of such incorporation or use as is envisaged by this sub-clause the provisions of sub-clauses (b) and (c) shall apply mutatis mutandis to those other products in place of the goods; provided that if the Seller shall sell such other products or any part thereof (without being under any duty to obtain the best price therefore) the Seller shall give the Buyer credit for any sum received by the Seller in excess of the unpaid price (including any interest charged hereunder) of such goods. For the avoidance of doubt the Seller shall not be liable for any loss, damage or claim whatsoever arising out of the sale of such products by the Buyer and the Buyer shall keep the Seller fully indemnified and held harmless in respect thereto;

(e) the Buyer shall keep separate from its own stock and material all goods supplied by the Seller until paid for in full. In the event that the Buyer becomes insolvent, has a receiver or administrator appointed over it or any part of it, or makes any proposal to its creditors for a composition or other arrangement, the Buyer shall, forthwith deliver (at its own expense) to the Seller any goods supplied under the Contract but not yet paid for.

9. Disposal before Payment

If the goods or any part thereof, whether or not incorporated into other products or used as materials for other products, are resold by the Buyer before he has made full payment to the Seller as aforesaid the Buyer shall hold upon trust for the Seller from the proceeds of such resale such sums as shall be equal to the amount then owing to the Seller in respect of the goods provided that if the Buyer has not received the proceeds of such resale in full the Seller shall be subrogated (without the need for further documentation) to the Buyer's rights against its customer to the extent of any balance still remaining due to the Seller in respect of the goods. Nothing contained herein shall affect any other rights the Seller may have against the Buyer's customer.

10. Warranties and Claims

(a) The Seller makes no warranty (other than those expressly made by the Seller) relating to the workmanship, design or materials of the goods and all other conditions, warranties, stipulations or other statements, whether express or implied by common law, statute or otherwise relating indirectly or directly to such matters are hereby excluded. In particular but without prejudice to the generality of the foregoing the Seller makes no warranty regarding the fitness for purpose, performance, use, quality or compatibility with specification or samples of the goods.

(b) Claims in respect of any alleged defect in the contractual quality of the goods delivered where the defect would have been revealed by reasonable examination of the goods on arrival, must be made in writing within 14 days after delivery, or if related to the transport of the goods, within such time as will enable the Seller to comply with all time limits and procedures laid down by the carrier by whom the goods were transported. If the Buyer shall make any complaint within the time stipulated, the Seller shall, after it has had a reasonable time to investigate the same and examine the goods in dispute, be entitled at its option: (i) to replace the goods; or (ii) to accept the return of the goods and credit the Buyer with the price thereof; or (iii) to make to the Buyer an allowance representing the difference between the value of the goods (as the Seller may in its sole opinion determine) at the time of the complaint by the Buyer and the value they would have had if they had been in accordance with the contract providing the Buyer pays the balance not in dispute according to normal terms.

PROVIDED ALWAYS that the Seller shall only exercise any of the options referred to in this clause 10(b) if (in the sole opinion of the Seller) the goods are defective.

(c) The return of goods by the Buyer shall not be made without the prior consent of the Seller. No claim can be entertained after the goods or any part thereof have been processed in any way.

11. Statutory Requirements and Infringement of Intellectual Property

(a) The Seller has taken reasonable steps to ensure that the goods meet known statutory requirements and that they do not infringe any patents trademarks or any other form of intellectual property rights belonging to third parties. Except where otherwise stated no warranty is given that the design construction or quality of the goods to be supplied under the Contract comply with all relevant requirements of any Statute, statutory rule, order or other instrument having the force of law which may be in force at the time of supply or that the goods do not infringe the intellectual property rights of a third party.

(b) The Buyer shall indemnify and hold the Seller harmless against all damages, penalties, costs and expenses to which the Seller may become liable as a result of any work done in accordance with the Buyer's specification or instructions which involves the infringement of any intellectual property rights of a third party whether registered or not and whether subsisting in the United Kingdom or elsewhere.

12 LIMITATION OF THE SELLER'S LIABILITY

(a) The Seller's charges to the Buyer are determined on the basis of exclusions from and limitations of liability contained in these Conditions and the Buyer expressly agrees that such exclusions and limitations are reasonable.

(b) The Seller shall not under any circumstances be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for any indirect or consequential loss or damage of any kind or loss of profit, business, contracts or savings.

(c) Subject to Clause 12(b) the Seller's aggregate liability under this contract shall not exceed the price of the goods supplied under this Contract in respect of which any such claim is made PROVIDED THAT nothing in this Contract shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence.

(d) No forbearance or indulgence by the Seller shown or granted to a Buyer, whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Seller against the Buyer or be taken as a waiver of any of these Conditions.

13 Force Majeure, etc.

The performance of this Contract is subject to variation or cancellation by the Seller owing to any act of God, war, strikes, governmental regulations or orders, national emergencies, lockouts, fire flood, drought, tempest or any other cause (whether or not of a like nature) beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the contract and the Seller shall not be held responsible for any inability to deliver caused by any such contingency.

14. Application of these Conditions

The Buyer accepts or will be deemed to accept by ordering any goods from the Seller that these Conditions shall prevail over any other conditions or terms unless agreed in writing by the Seller and that these Conditions set forth the entire agreement between the parties and supersedes all representations, warranties, agreements or assurances made by the Seller PROVIDED THAT this shall not exclude any liability which the Seller has for any statements made fraudulently.

15. Governing Law

The Law of England shall govern the validity construction and performance of any contract to which these conditions apply and the parties submit to the exclusive jurisdiction of the English Courts.

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