1. GENERAL
(a) All General Conditions of Sale (the “Conditions”), the “Company” means Morgan Hope Industries Limited, the “goods” includes any item of whatsoever nature which is to be supplied to the Purchaser by the Company in the performance of the contract with the Purchaser in respect of which the date of the invoice is in dispute, the “Purchaser” means the person, firm or company to which the Company is selling the goods and the “Contract” means the contract between the Purchaser and the Company.
(b) These Conditions shall apply to and form part of every contract of sale entered into by the Company and by any instructions of the Purchaser or any failure of the Purchaser to give such instructions as the Company, at its discretion, may require.
(c) Unless otherwise stated in writing, the Company shall not be required to supply the goods in accordance with the Company’s written quotation if (a) the Purchaser has not paid the price quoted by the Company within 7 days of the date of invoice; (b) the Company has not received the full price payable for the goods prior to the date on which the whole invoice (except where the value of the whole invoice is in dispute); (c) the goods are held by the Company in respect of which the P
(d) The price payable for the goods shall be the price included in the Company’s current list price of the Company (or a quoted price is no longer valid), the list price of the Company for the goods at the date when the goods are ready for delivery or dispatch, and in the case of an order cancelled, returned or not otherwise delivered, the price payable for the goods at the date when the goods would in the ordinary course of events have been received.
(e) The Company shall hold the Purchaser liable for costs incurred in respect of any goods in course of manufacture or ready for dispatch.
(f) The Purchaser shall be liable for any interests, costs, fines, surcharges, fees or other charges or amounts which are due and payable in respect of the price of the goods, or any part thereof, unless and until accepted by the Company in writing.
2. LIMITS OF CONTRACT
(a) The price payable for goods shall be the price payable at the time of dispatch of the goods, unless and until accepted by the Company in writing.
(b) The price payable for goods shall be the price charged at the applicable rate and recoverable by the Company in addition to the price payable for the goods, in all other cases.
(c) If the Company delivers to the Purchaser a quantity of goods of up to 5% in excess of the quantity stated in the order, the Company shall hold the Purchaser liable for the cost of such excess.
(d) Any liability of the Company for non-delivery of the goods shall be limited to repayment of the price payable for the goods at the pro rata contract rate.
3. PAYMENT DISPUTES AND DEBIT NOTES
(a) If the Purchaser operates a debit note system, debit notes will only be accepted by the Company if they are in accordance with these Conditions.
(b) Any debit note or other claim must be received by the Company by any other form of packaging and no credit will be allowed for its return.
(c) If the Purchaser fails to deliver the goods when they are ready for collection or the Company is unable to deliver the goods on time because the Purchaser has not provided appropriate delivery instructions, licences or authorisations, then, without limiting any other right or remedy available to the Company, the Company shall be entitled to make payment to the Purchaser in respect of any goods not collected or returned because of debt.
(d) The Company shall hold the Purchaser liable for costs incurred in respect of the goods in accordance with the Company’s written quotation.
4. RECORDS AND PRICES
(a) All invoiced price discrepancies must be notified by the Purchaser to the Company within 7 days of the date of invoice.
(b) All invoices must state the name and address of the Company at which the charges are levied.
(c) The Purchaser may request the Company to provide internal or external costs or prices, unless and until accepted by the Company in writing.
(d) The price payable for goods shall be the price included in the Company’s current list price of the Company (or a quoted price is no longer valid), the list price of the Company for the goods at the date when the goods are ready for delivery or dispatch, and in the case of an order cancelled, returned or not otherwise delivered, the price payable for the goods at the date when the goods would in the ordinary course of events have been received.
(e) The Company shall hold the Purchaser liable for costs incurred in respect of any goods in course of manufacture or ready for dispatch.
5. PAYMENT
(a) Unless otherwise agreed in writing between the Purchaser and the Company, the Company may invoice the Purchaser for the price of goods on or at any time after delivery of the goods, unless the goods are to be collectively delivered, and the Purchaser shall within 7 days of the date of invoice, which event the Company shall be entitled to invoice for any price prior to the price at any time after the Company has notified the Purchaser that the goods are ready for collection or (as the case may be) the Company shall hold the Purchaser liable for costs incurred in respect of any goods in course of manufacture or ready for dispatch.
(b) If the Purchaser fails to deliver the goods at the agreed delivery location, the Company shall hold the Purchaser liable for costs incurred in respect of any goods in course of manufacture or ready for dispatch.
(c) Any debit note or other claim must be received by the Company by any other form of packaging and no credit will be allowed for its return.
6. PA YMENT DISPUTES AND DEBIT NOTES
(a) If the Company delivers to the Purchaser a quantity of goods of up to 5% in excess of the quantity stated in the order, the Company shall hold the Purchaser liable for the cost of such excess.
(b) Any debit note or other claim must be received by the Company by any other form of packaging and no credit will be allowed for its return.
(c) If the Purchaser fails to deliver the goods when they are ready for collection or the Company is unable to deliver the goods on time because the Purchaser has not provided appropriate delivery instructions, licences or authorisations, then, without limiting any other right or remedy available to the Company, the Company shall be entitled to make payment to the Purchaser in respect of any goods not collected or returned because of debt.
(d) The Company shall hold the Purchaser liable for costs incurred in respect of the goods in accordance with the Company’s written quotation.
12. PERFORMANCE, INSPECTION AND TESTS
(a) Any order for goods which are to be delivered under the Conditions is based on the performance and/or design specifications furnished by the Company, unaltered. If any such specifications are not furnished, and, where practicable, submitted to its standards at the Company and the Purchaser agrees that the Company may terminate this contract, that the Purchaser shall have followed all instructions issued by the Company in respect to the operation or installation of the goods.
(b) In the event of any delay on the Purchaser’s part in testing or repair of the goods which have been delivered, the Purchaser has 7 days’ notice of the Company to perform the testing or repair and the Company accordingly has the right to accept and pay for such tests as if they had been performed in the Purchaser’s presence.
13. DESCRIPTIVE MATTER AND ILLUSTRATIONS
(a) All descriptions and illustrations are intended to be descriptive of the goods and not to be a guarantee of the quality or condition of the goods, and the Purchaser shall accept the goods even if defects become apparent after delivery.
(b) All illustrations and designs furnished by the Company are confidential and must be treated as such.
(c) The Purchaser agrees not to reproduce or use the Company’s trademarks or trade names for any purpose without the prior written consent of the Company.
14. WARRANTY
(a) The Warranty given in this clause is subject to the following provisions, namely:
(i) that the Purchaser shall have followed all instructions issued by the Company in respect to the operation or installation of the goods, and that the Purchaser shall have followed the instructions given by the Company in catalogues, price lists, advertising material and forwardings specifications are by way of general descriptions and approximate only, and shall not form part of any contract or give rise to any liability on the part of the Company.
(ii) that in the case of any other defects, the Purchaser shall notify the Company of the defects in writing within seven working days of the date when the defect becomes apparent, and within 14 days of delivery, of the Purchaser’s receipt of the goods.
(iii) that the Purchaser has not altered or repaired any goods without the written consent of the Company.
(iv) that the Purchaser has made no further use of any goods after the return of the goods for inspection or repair.
(b) The protective cover from the company shall be removed in the event of any delay on the Purchaser’s part in testing or repair of the goods which have been delivered, and the Company shall be entitled to resell or use the goods in any manner it deems fit.
15. LIABILITY
(a) Subject as expressly provided in these Conditions, and except that the goods are sold to a person dealing as a consumer (within the meaning of the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
(b) All illustrations and designs and all other drawings submitted by the Company to the Purchaser are for illustrative purposes only and shall not form part of any contract.
16. REJECTION
(a) Unless otherwise agreed in writing, and subject to Condition 15 herein, goods rejected as not complying with the contract shall be rejected within 7 days of the date of delivery of the goods from the Company’s premises or if some other place for delivery is specified in the contract, delivery to that place.
(b) CANCELLATION
(a) No order which has been accepted by the Company may be terminated by the Purchaser (whether by way of cancellation or otherwise) except with the prior written agreement of the Company (for the Company’s sole discretion) and on terms satisfactory to the Company, and the Company shall be indemnified by the Purchaser for all loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of the cancellation.
(b) The Company’s obligations under the Terms and Conditions shall apply in relation to any goods which are the subject of a contract which is purportedly terminated by the Purchaser otherwise than in accordance with this Condition 14.
17. RETURN OF GOODS
(a) Subject to Condition 14(b) herein, in no circumstances may goods supplied in accordance with a binding contract for sale be returned without the Purchaser first having applied for and obtained the written consent of the Company, provided that:
(i) all goods returned are in such a saleable condition, with unchanged cartons and must be complete in box quantities or minimum sales quantities.
(ii) goods that are specialised or that have been modified in any way from standard will not be eligible to be returned.
(iii) goods that are collected from the Company’s premises must be paid for in advance.
(iv) the Company will not collect goods from the Purchaser and
(v) is handling charges (to cover the Company’s costs of re-storing, transporting and administration) will be deducted from any credit allowed by the Company, the handling charge will be calculated on the basis of 30% of the value of the returned goods, subject to a minimum handling charge of £50.
(vi) luminaires that are sold within the UK when it reaches the end of its useful life, may be returned for recycling, subject to our Conditions of Sale.
18. INTELLECTUAL PROPERTY
(a) The Purchaser will indemnify the Company against all damages, penalties, costs, losses and expenses suffered by the Company, and for which it may be liable, in respect of the infringement of any intellectual property, including, but not limited to, patent, copyright, registered design, trade mark, trade name or know how arising out of the Company’s manufacture of goods or the application of any process to the goods in accordance with specification, design, drawings or other data supplied by the Purchaser or its servants or agents.
(b) All drawings and descriptions other than submission to the Company, together with the copyright thereto, shall remain the property of the Company.
19. FORCE MAJEURE
The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the contract or any unfulfilled part thereof or to discontinue delivery or to make partial deliveries or extend the time or times for delivery, if the manufacture of the goods by the Company or the Company’s suppliers, or the delivery of the goods or the performance by the Company of any of its obligations under the contract is precluded by any reason of war or strike or national emergency or any industrial action (including, without limitation, labour disputes with the Company or any sub contractors of the Company), or breakdown of production or reorganisation, interruption of transport, strike, fire, explosion, flood, epidemic, bad weather or any other condition beyond the reasonable control of the Company or its sub contractors, whether or not such cause exists at the date of acceptance of the order or at any time after such acceptance, and the Company shall be entitled to give notice in writing to the Company to terminate the contract.
20. PASSING OF PROPERTY AND RISK
(a) Risk of damage to or loss of the goods shall pass to the Purchaser: (i) in the case of goods to be delivered at the Company’s premises, at the time when the Company notifies the Purchaser that the goods are available for collection; or (ii) in the case of goods to be delivered otherwise than at the Company’s premises, at the time of delivery, or, if the Purchaser wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery.
(b) Nothing in these Conditions of Sale shall affect the passing of risk in the case of goods supplied in accordance with the Company’s negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable whether in contract, tort or otherwise to the Purchaser by reason of any representation (whether fraudulent or not) or warranty, condition or other term implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979), for any indirect, special or consequential loss or damage (including, but not limited to, loss of use, loss of profit, loss of production of contract or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its servants or agents, or by the Purchaser’s negligence, or by any other cause), which arise out of or in connection with supply of the goods or their sale or resale by the Purchaser.
(c) The Purchaser indemnifies the Company against all liabilities, costs, expenses (including but not limited to, legal and other professional costs and expenses (including any direct, indirect, consequential losses, loss of profit, loss of reputation and all interest, statutory or other penalties) suffered or incurred by the Company arising out of or in connection with the Purchaser’s breach, negligent performance or non-performance of the obligations in these conditions.
21. INFRINGEMENT OF PATENT
(a) Unless otherwise agreed in writing, and subject to Condition 15 herein, goods rejected as not complying with the contract shall be rejected within 7 days of the date of collection of the goods from the Company’s premises or if some other place for delivery is specified in the contract, delivery to that place.
22. INSOLVENCY OF PURCHASER
(a) This Condition applies if:
(i) the Purchaser becomes insolvent or 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);
(ii) an encumbrancer takes possession, or a receiver or administrator is appointed, of any of the property or assets of the Purchaser;
(iii) the Purchaser ceases, or threatens to cease, to carry on business; or
(iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
(b) If this Condition applies:
(i) without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Purchaser, and if the goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any voluntary arrangement or arrangement to the contrary; and
(ii) the Company shall have a duty immediately to bring to the notice of any receiver, administrator or any such person or persons appointed the existence and content of the Company’s claim for the full amount of the price, the cost of storage and any other losses or damages which may be attributable to the Purchaser;
(iii) the rights of the Company to use or trade on the Company’s goods shall immediately terminate and any such receiver, administrator or any person or persons appointed will not be entitled to use or to trade on the Company’s goods unless so authorised in writing by the Company.
23. ARBITRATION
If at any time any question, dispute or difference whatsoever shall arise between the Company and the Purchaser, or any issue or point in connection with the contract, either party may give the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failure agreement within 30 days of receipt of such notice, of some person appointed by the President for the time being of the Chartered Institute of Arbitrators. A submission to arbitration under the Condition shall be deemed to be a submission to a sole arbitrator pursuant to the Arbitration Act 1996 or any statutory modification or re-enactment thereof. Any such arbitration shall be held in London, England.
24. GOVERNING LAW AND JURISDICTION
(a) All contracts to which these Conditions apply shall be governed by and construed in accordance with English Law.
(b) Subject to Condition 23 herein, the Purchaser agrees to submit to the non-exclusive jurisdiction of the English courts.
25. MISCELLANEOUS
(a) No waiver on the part of any of the Company’s rights under the contract is without prejudice to any other right or remedy of the Company whether under the contract or not.
(b) If the Purchaser constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, Warranties, representations and understandings between them whether written or oral relating to its subject matter.
(c) Any acceptance or rejection by either party to another under these Conditions shall be in writing and 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 in writing to this provision to the party giving the notice. Notices shall be deemed to have been received (if sent by prepaid first class post, 2 days after posting). (i) if delivered by hand on a working day prior to 4.00pm, on the day of delivery and otherwise on the next working day; (ii) if sent by first class post on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.
(d) No waiver by the Company of any breach of the contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
(e) If any provision of these Conditions is held by a court or other competent authority to be invalid or unenforceable in whole or in part, against the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected.