

SCHOLLE EUROPE LTD. TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

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 Customer and Scholle.

Contract means the contract for the sale and purchase of the Products.

Customer means the person who accepts a quotation from Scholle for the sale of the Products or whose order for the Products is accepted by Scholle.

Products means the goods (including any instalment of the goods or any parts for them) specified on the order form to which these Conditions are annexed.

Scholle means Scholle Europe Limited (registered in England under number 3467709).

Writing means all forms of written communication including but not limited to facsimile transmission or electronic mail.

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

1.3 Except where the context otherwise requires words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa.

1.4 Unless otherwise stated a reference to a clause or sub-clause is a reference to a clause or a sub-clause of these Conditions.

2. BASIS OF SALE

2.1 All orders are accepted and Products supplied subject to these Conditions. Any order placed by the Customer will constitute an offer to contract upon these Conditions and any quotation given by Scholle will constitute an invitation to the Customer to make an offer at the quoted price in accordance with these Conditions. In either case these Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such offer is made or purported to be made by the Customer

2.2 No order submitted by the Customer shall be deemed to be accepted by Scholle unless and until confirmed in Writing by Scholle's duly authorised representative.

2.3 No variation to these Conditions shall be binding unless agreed in Writing by a duly authorised representative of Scholle.

2.4 Scholle's employees or agents are not authorised to make any representations concerning the Products unless authorisation is confirmed by a duly authorised representative of Scholle in Writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

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

2.6 Any advice or recommendation given by Scholle or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products is followed or acted upon entirely at the Customer's own risk, and accordingly Scholle shall not be liable for any such advice or recommendation.

2.7 No right or licence is granted under the Contract to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or resell the Products.

2.8 The specifications and designs of the Products (including copyright, design right or other intellectual property in them) shall as between the parties be the property of Scholle. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of Scholle then the Customer warrants that the use of these designs or specifications per the manufacture, processing, assembly or supply of the Products shall not infringe the rights of any third party.

3. ORDERS AND SPECIFICATIONS

3.1 The Customer shall be responsible to Scholle for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving Scholle any necessary information relating to the Products within a sufficient time to enable Scholle to perform the Contract in accordance with its terms.

3.2 The quantity quality and description of any specification for the Products shall be those in the Customer's written specification as confirmed in Scholle's quotation.

3.3 Scholle will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in any third party manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation.

3.4 No order which has been accepted by Scholle may be cancelled or amended by the Customer except with the agreement in writing of Scholle and on terms that the Customer shall indemnify Scholle in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses sustained incurred or paid by Scholle directly or indirectly as a result of the cancellation or amendment.

3.5 If the Products are to be manufactured or any process is to be applied to the Products by Scholle in accordance with a specification submitted by the Customer the Customer shall indemnify Scholle fully against all loss damage costs and expenses sustained incurred or paid by Scholle arising either directly or indirectly in connection with or 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.

3.6 Scholle reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory or EC requirements if the Products are to be supplied to Scholles specification which do not materially affect their quality or performance.

4. PRICE OF THE PRODUCTS

4.1 The price of the Products shall be Scholle's quoted price which shall be binding on Scholle subject to the terms of these Conditions and provided that the Customer shall accept Scholles quotation within 21 days. All prices quoted shall be valid for 21 days only or until earlier acceptance by the Customer after which time they may be altered by Scholle without giving notice of such alteration to the Customer.

4.2 Scholle may by giving notice to the Customer at any time up to 14 days before delivery increase the price of the Products to reflect any increase in the cost to Scholle which is due to factors occurring after the making of the Contract which are beyond the reasonable control of Scholle (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs) provided that the Customer may cancel this Contract by giving notice to Scholle in Writing within 7 days of the date of any such notice from Scholle. Except as otherwise agreed in writing between the Customer and Scholle all prices are given by Scholle on an ex works basis ie exclusive of transport packaging and insurance costs.

4.3 For the avoidance of doubt Scholle's quoted price is exclusive of any value added or other taxes or customs fees which the Customer shall be additionally liable to pay Scholle.

4.4 The cost of pallets and returnable containers will be charged to the Customer in addition to the price but full credit will be given to the Customer provided they are undamaged and available for collection by Scholle before the relevant due payment date. Unless agreed otherwise in Writing, Scholle will arrange for the return of pallets and returnable containers at its own cost and the Customer agrees to allow Scholle or its agents reasonable access to the Customer's premises to effect such collection.

5. TERMS OF PAYMENT

5.1 Subject to Clause 5.2, Scholle shall be entitled to invoice the Customer for the price of the Products on delivery or at any time after delivery of the Products and if it has been agreed that the Products are to be delivered in instalments the invoice shall be for the price of the Products delivered in the instalment to which the invoice relates. The Customer shall pay the price of the Products in the invoice within 21 days of the end of the calendar month in which the Products are delivered. The time of payment of the price in the invoice shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.2 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to Scholle, Scholle shall be entitled to:-

5.2.1 cancel the Contract or suspend any further deliveries to the Customer or suspend any credit facilities afforded to the Customer;

5.2.2 appropriate any payment made by the Customer to such of the Products (or the products supplied under any other contract between the Customer and Scholle) as Scholle may think fit (notwithstanding any purported appropriation by the Customer);

5.2.3 charge the Customer interest at 2% above [] base lending rate from time to time (both before and after any judgment) on the balance of any amount due but unpaid beyond 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); or

5.2.4 require immediate payment for all products supplied to the Customer.

6. DELIVERY AND ACCEPTANCE

6.1 Delivery of the Products shall be made by making them available at Scholle's premises on an ex works basis after giving the Customer reasonable notice of the date upon which they are available for collection. Scholle may agree to procure the transportation of the Products to a destination specified by the Customer but in such cases delivery shall still be ex works at Scholles' premises and risk in the Products shall pass at the point of delivery. In the event that Scholle agrees to procure transportation the cost of delivery shall be paid by Scholle unless otherwise agreed between the parties in Writing. Where Scholle agrees to procure delivery of the Products otherwise than at Scholles premises and Scholle uses an independent carrier to effect such delivery, Scholle shall be under no obligation under s32(2) of the Sale of Goods Act 1979.

6.2 Any dates quoted for delivery of the Products are approximate only. The Products may be delivered by Scholle in advance of the quoted date upon giving reasonable notice to the Customer. Time for delivery shall not be of the essence of the Contract unless previously agreed by Scholle in Writing.

6.3 Scholle may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Conditions. Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Scholle to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat such failure as a breach of the Contract as a whole.

6.4 Notwithstanding that Scholle may have delayed or failed to deliver the Products (or any of them) promptly the Customer shall be bound to accept delivery and to pay for the Products in full provided that delivery shall be tendered at any time within 3 months of the delivery date.

6.5 If Scholle fails to deliver the Products for any reason other than any cause beyond Scholle's reasonable control or the Customer's fault and Scholle is accordingly liable to the Customer Scholle's liability shall be limited to the difference between (1) the cost to the Customer (in the cheapest available market) of similar Products to replace the Products not delivered and (2) the price of the undelivered Products.

6.6 If the Customer fails to take delivery of the Products (otherwise than by reason of Scholle's fault) then without prejudice to any other right or remedy available to Scholle, Scholle may:-

6.6.1 invoice the Customer on or after the date agreed with Scholle for delivery and store the Products until the Customer takes actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and any additional transport costs; or

6.6.2 sell the Products at the best price readily obtainable and charge the Customer for any shortfall below the price of the Contract.

6.7 The Customer will be deemed to have accepted the Products 48 (forty eight) hours after delivery and will not thereafter be entitled to reject Products which are not in accordance with the Contract.

6.8 Where Scholle is to procure delivery of the Products to the Customer's premises in accordance with clause 6.1 and those premises are outside the UK, the Customer shall be required to notify Scholle of all steps necessary to comply with relevant regulations or legislation governing the importation of the Products into the particular country concerned and Scholle shall not be liable to the Customer in respect of any failure by Scholle or any third party to comply with any such regulations or legislation whether or not notified to Scholle in accordance with this clause.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Products shall pass to the Customer at the time when the Products are delivered in accordance with clause 6.1, regardless of whether Scholle has agreed to procure transportation to the Customer's premises.

7.2 Notwithstanding delivery and the passing of risk in the Products or any other provision of these Conditions the property in the Products comprised in each delivery shall not pass to the Customer until Scholle has received in cash or cleared funds payment of the price of the Products and all other Products agreed to be sold by Scholle to the Customer for which payment is then due.

7.3 Until such time as the property in the Products passes to the Customer the Customer shall hold the Products as Scholle's fiduciary agent and bailee and shall keep the Products separate from those of the Customer and third parties and properly stored protected and insured and identified as Scholle's property. Until that time the Customer shall not be entitled to resell or use the Products but shall account to Scholle for the proceeds of sale or otherwise of the Products whether tangible or intangible including insurance proceeds and shall keep all such proceeds in trust for Scholle separate from any moneys or property of the Customer and third parties and identified as the moneys or property of the Customer and in the case of tangible proceeds properly stored protected and insured.

7.4 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) Scholle shall be entitled to any time to require the Customer to deliver up the Products to Scholle and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products and if necessary to sever them from anything to which they are attached without being responsible for any damage thereby caused without prejudice to any other remedy which may be available to Scholle whether in law equity or otherwise.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Scholle but if the Customer does so all moneys owing by the Customer to Scholle (without prejudice to any other right or remedy of Scholle) will forthwith become due and payable.

8. WARRANTY AND LIABILITY

8.1 Scholle warrants that, for a period of twelve (12) months from delivery, the Products shall be free from defects in materials and workmanship.

8.2 Save in accordance with the express terms of the Contract all implied warranties conditions or terms relating to fitness for purpose quality or condition of the Products and whether implied by statute or common law or otherwise are excluded (save where the Products are sold to a person dealing as a consumer)

8.3 Any claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to Scholle 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 discovery of the defect or failure. If delivery is refused, and the Customer does not notify Scholle accordingly, the Customer shall not be entitled to reject the Products and Scholle shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.

8.4 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification is notified to Scholle in accordance with these Conditions, Scholle shall be entitled to replace the Products, (or the part in question) free of charge or, at Scholles sole discretion, refund to the Customer the price of the Products (or a proportionate part of the price), but Scholle shall have no further liability to the Customer.

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

8.6 Except in respect of death or personal injury caused by Scholle's negligence Scholle's liability to the Customer in relation to any Contract whether for any breach of contract or otherwise shall not in any event exceed the price of that Contract.

9. FORCE MAJEURE

9.1 Scholle shall not in any event be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Scholle's obligations in relation to the Products if the delay or failure was due to any cause beyond Scholle's reasonable control and Scholle shall be entitled to determine the Contract in such circumstances and to be discharged from all liabilities whatsoever to the Customer. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond Scholle's reasonable control:-

9.1.1 Act of God explosion flood tempest fire or accident;

9.1.2 war or threat of war sabotage insurrection civil disturbance or requisition;

9.1.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

9.1.4 import or export regulations or embargoes;

9.1.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of Scholle or of a third party);

9.1.6 the commission of any criminal act or shortage of goods;

9.1.7 the failure by a sub-contractor to meet its obligations to Scholle.

9.1.8 difficulties in obtaining raw materials labour fuel parts or machinery.

10. INSOLVENCY OF CUSTOMER

10.1 This clause applies if:

10.1.1 the Customer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) 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

10.1.2 an encumbrancer takes possession or a receiver administrative receiver or administrator is appointed over any of the property or assets of the Customer; or

10.1.3 the Customer ceases or threatens to cease to carry on business or is compulsorily or voluntarily wound up; or

10.1.4 the Customer (being an individual) shall die; or

10.1.5 the Customer in Scholle's reasonable opinion is unable to pay its debts within the meaning of the Insolvency Act 1986; or

10.1.6 any distress execution sequestration or other process is levied or enforced upon or sued against any property of the Customer; or

10.1.7 Scholle reasonably apprehends that any of the events mentioned above is about to occur; or

10.1.8 the Customer has failed to make any payment owing to Scholle on the due date for payment whether under the Contract or otherwise.

10.2 If this clause applies then without prejudice to any other right or remedy available to Scholle Scholle shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. GENERAL

11.1 Scholle is a member of the group of companies whose holding company is Scholle Corporation; and accordingly Scholle may perform any of its obligations or exercise any of its rights hereunder by itself or through any other members of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Scholle.

11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and may be delivered by hand or sent by first class post to the other's registered office or to such other address as the addressee may from time to time have notified the other for the purpose of and in accordance with this clause or by facsimile transmission to the addressee's facsimile number notified by the addressee to the other from time to time for the purpose of and in accordance with this clause. The notice will be deemed to have been received (if delivered by first class post) 48 hours after posting and (if delivered by hand or facsimile transmission) at the time of delivery if during business hours in the place of intended receipt on a working day in that place and otherwise at the opening of business in that place on the next succeeding such working day.

11.3 All Scholle's rights and remedies whether under these Conditions or arising in law equity or otherwise are cumulative and no exercise of any right arising under these Conditions will risk or prejudice the exercise of any other right granted by these Conditions or otherwise available.

11.4 No waiver by Scholle of any breach of the Contract or these Conditions by the Customer shall be considered a waiver of any subsequent breach of the same or any other provision.

11.5 If and to the extent that any provision or any part of the provisions of these Conditions is or may be illegal void or unenforceable for any reason then such provision or part thereof (as the case may be) will be deemed to be severable from the remaining provisions or parts of the relevant provision (as the case may be) all of which remaining provisions will remain in full force and effect.

11.6 The construction validity and performance of these Conditions shall be governed by the law of England and the parties consider the Contract to be an agreement formed in England. The Contract shall be governed by the laws of England and the Customer hereby agrees to submit to the non-exclusive jurisdiction of the English courts.

11.7 The Customer waives any objection to proceedings with respect to the Contract or these Conditions in such courts on the grounds of venue or inconvenient forum.

12. ASSIGNMENT

12.1 Scholle is entitled to sub-contract or otherwise delegate all or any part of its rights and obligations under the Contract without the Customer's consent.