

Amaco Supply Solutions UK limited

Terms and Conditions of Supply

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Products / Goods that we sell.

1. Definitions and interpretation

1.1 In these Terms:

%Affiliate+ means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company or firm;

%Business Day+ means any week day, other than a bank or public holiday in England;

%Business Hours+ means between 08:00am and 17:00 on a Business Day;

%Contract+ means a contract between the parties for the sale and supply of Products entered into in accordance with Clause 3;

%Control+ means:

- (a) the legal power to directly or indirectly control the management of a company, firm or other entity;
- (b) the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or
- (c) ownership of more than 50% of the voting shares in a company;

and **%Controlled+** will be construed accordingly;

%Customer+ means the customer for the Products as specified in Quotation, Sales Order and Invoice or any other such documents used by the Company.

%Force Majeure Event+ means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

%Prices+ means the Supplier's quoted prices for the Products as sent by the Supplier to the Customer.

%Products+ means the products which may be or are purchased by the Customer from the Supplier under these Terms (details of which are set out in Quotation, Sales Order and Invoice)

%Supplier+ means Amaco Supply Solutions UK Limited, a limited company incorporated in England and Wales (registration number 6980292) having its registered office at Unit 102 Staffordshire Business Village, 72 Leek Road, Stoke on Trent, ST4 2AR

%Terms+ means these terms and conditions of supply.

1.2 In these Terms, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of these Terms.

1.4 In these Terms, **%persons+** include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms; it follows that a general concept or category utilised in these Terms will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. These Terms

2.1 These Terms and associated company documents contain the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions.

2.2 Without prejudice to the generality of Clause 2.1, any reference to any of the Customer's terms and conditions in any document forming part of or evidencing a Contract will not have the effect of incorporating any such terms and conditions into the Contract, nor of forming any other contract between the parties for the purchase of the Products.

2.3 The Customer hereby waives any right it might otherwise have to rely upon the Customer's terms and conditions referred to in Clause 2.2 and the other terms and conditions referred to in Clause 2.1.

3. Contracts

3.1 Each written quotation for the supply of Products given by the Supplier to the Customer will be deemed to be an offer by the Supplier to supply Products to the Customer subject to these Terms.

3.2 In order for a Contract to come into force:

- (a) the Supplier must submit a written quotation to the Customer; and
- (b) the Customer must send to the Supplier its written acceptance of that quotation, together with its written acceptance of these Terms, within a mutually agreed period of time.

and upon the receipt by the Supplier of the written acceptance of the quotation in accordance with this Clause 3.2 a Contract will come into force between the parties.

3.3 The Customer may cancel a Contract insofar as it relates to particular Products, only upon written request, and written authorisation by the seller, and upon payment of a reasonable cancellation fee. The reasonable cancellation fee will be determined by the seller and will reflect, among other factors, expenses already incurred, commitments made by the seller on behalf of the customer, related business overheads and profit.

3.4 The Supplier may increase the Price of Products under a Contract, by giving to the Customer written notice of the increase at any time before delivery / collection of those Products / Goods, if there is a material increase in the cost to the Supplier of obtaining or delivering the Products, providing that any increase under this Clause must not exceed the amount of the increase in cost to the Supplier.

4. Delivery

4.1 Unless otherwise agreed in writing:

- (a) all Products, based on ex-works supply, will be collected by the Customer from the Supplier's nominated collection address, within 5 Business Days following the receipt by the Customer of a written notice from the Supplier that the Products are available for collection;
- (b) the Customer will be responsible for arranging loading, carriage, transport, unloading and insurance for the Products and for clearing the Products for export and import;
- (c) the Customer will be responsible for paying all costs relating to loading, carriage, transport, unloading, insurance, export and import of the Products; and
- (d) risk in the Products will pass from the Supplier to the Customer when the Products are collected by the Customer.
- (e) all Products delivered by the Supplier to the Customer's nominated delivery address, the Supplier will be responsible for arranging loading, carriage, transport, unloading and insurance for the Products and for clearing the Products for export and import;
- (f) the Supplier will be responsible, where appropriate, for paying all costs relating to loading, carriage, transport, unloading, insurance, export and import of the Products; and
- (g) risk in the Products will pass from the Supplier to the Customer when the Products are delivered to the Customer.]

4.2 If the parties agree that delivery / collection of the Products under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.

4.3 Any date or dates for the delivery / the making available for collection of the Products agreed by the parties as part of a Contract will not be of the essence of the Contract.

5. Title

5.1 Legal and equitable title to the Products will pass from the Supplier to the Customer upon the later of:

- (a) delivery / collection of the Products / goods; and
- (b) receipt by the Supplier of all amounts due from the Customer to the Supplier under the relevant Contract.

5.2 Until title to the Products has passed to the Customer:

- (a) the Customer will hold the Products as fiduciary agent and bailee of the Supplier;
- (b) the Customer will: (i) store the Products in a secure, safe, dry and clean environment separately from other products and goods; (ii) ensure that the Products are easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Products or their packaging; (iv) ensure that no charge, lien or other encumbrance is created over the Products; (v) deliver up the Products to the Supplier upon demand; [(vi) insure the Products on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier (and on request produce to the Supplier such policy of insurance and a receipt for the then-current premium); and (vii) hold all proceeds of the insurance referred to above on trust for the Supplier and not mix them with any other money or pay the proceeds into any overdrawn bank account].

5.3 The Supplier shall be entitled without further notice to inspect or recover possession of any Products to which it retains title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Products are or may be situated for the purpose of inspecting or removing any such Products the title in which has remained with the Supplier.

5.4 The Supplier may bring an action for the Prices of Products, and any other amounts due under a Contract, notwithstanding that title to the Products has not passed to Customer.

6. Prices and payment

6.1 The Supplier may issue an invoice for the Prices under a Contract to the Customer at any time after the Products / goods have been made ready for delivery to the customer or collection by the Customer.

6.2 The Customer will pay the Prices to the Supplier within 30 days of the date of issue of an invoice issued in accordance with Clause 6.1. Unless specific terms have been applied to a customer's account.

6.3 All amounts payable under a Contract are exclusive of all value-added, export, import, and other taxes and duties which will be payable by the Customer.

6.4 Prices must be paid by [debit or credit card, direct debit, bank transfer or by cheque (using such payment details as are notified by the Supplier to the Customer from time to time)].

6.5 If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract, the Supplier may charge the Customer interest on the overdue amount at the rate of 8 % per year above the UK base rate of Lloyds TSB Bank Plc from time to time, which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand.

7. Warranties

7.1 The Supplier warrants that:

- (a) the Supplier has (or will have at the relevant time) the right to sell the Products;
- (b) the Products are free from any charge or encumbrance, subject to Clause 5 and subject to any other charge or encumbrance disclosed or known to the Customer before the relevant Contract is made;
- (c) the Customer shall enjoy quiet possession of the Products, subject to the rights referred to in Clause 7.1(b);
- (d) the Products correspond to any description of the Products supplied by the Supplier to the Customer;

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- (e) the Products are of satisfactory quality;
- (f) the Products are fit for any purpose expressly or impliedly made known by the Customer to the Supplier before the relevant Contract is made;
- (g) the Products correspond to any sample of the Products supplied by the Supplier to the Customer, and will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample;
- (h) the Products will comply with all laws, rules, regulations applicable to the marketing and sale of the Products in United Kingdom and all standards agreed between the parties; and
- (i) the Products will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause 7.1(h).
- 7.2 All of the parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Subject to Clause 9.1 and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related contract.
- 8. Complaints, credits and replacements**
- 8.1 The Supplier will promptly and in any event within 10 Business Days, fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Products.
- 8.2 If Products do not comply with any warranty given by the Supplier / manufacturer under a Contract, the Customer may with the prior agreement of the Supplier return those Products for either (at the option of the Supplier):
- (a) a full credit of the price paid to the Supplier for such Products (excluding original delivery and related charges);
- (b) replacement Products; or
- (c) a credit note in respect of the Price of the Products (to be offset against future purchases from the Supplier).
- 8.3 Products returned under Clause 8.2 must be properly packed and returned to nominated delivery address within 30 Business Days of receipt of the Products by the Customer. Any Products returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Products.
- 9. Limitations of liability**
- 9.1 Nothing in any Contract will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation on the part of that party; or
- (c) any other liability which may not be excluded or limited under applicable law.
- 9.2 Subject to Clause 9.1 and without prejudice to the express indemnities in these Terms, the Supplier's liability to the Customer under or in connection with each Contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) the Supplier will not be liable for any: (i) loss of profits, income or anticipated savings, (ii) loss or corruption of any data, database or software, (iii) reputational damage or damage to goodwill, (iv) loss of any contract or commercial opportunity, or (v) indirect, special or consequential loss or damage;
- (b) the Supplier will not be liable for any losses arising out of a Force Majeure Event;
- (c) the Supplier's liability in relation to any event or series of related events will not exceed the value of the contract between both parties.
- 10. Force majeure**
- 10.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under a Contract (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 10.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under a Contract, will:
- (a) forthwith notify the other; and
- (b) will inform the other of the period for which it is estimated that such failure or delay will continue.
- 10.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.
- 12. Contract term and termination**
- 12.1 Each Contract will come into force in accordance with Clause 3, and will continue in force until the earlier of:
- (a) the later of completion of: (i) delivery / collection of all Products; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
- (b) the termination of the Contract in accordance with the provisions of this Clause.
- 12.2 A Contract may be terminated in the following circumstances:
- (a) either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract;
- (b) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under the / any Contract by the due date for payment; and
- (c) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to accept delivery of the Products / collect the Products on the date agreed in the relevant Contract.
- 12.3 Either party may terminate any Contract immediately by giving written notice to the other party if:
- (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 13. Effects of termination**
- 13.1 Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5, 6.5, 8, 13 and 15.
- 13.2 Termination of a Contract will not affect either party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.
- 14. Notices**
- 14.1 Any notice given under a Contract must be in writing (whether or not described as 'written notice' in these Terms) and must be delivered personally, sent by air mail, or sent by fax, or sent by email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as notified by one party to the other in accordance with this Clause).
- The Supplier:
Amaco Supply Solutions UK Limited, Unit 102 Staffordshire Business Village, 72 Leek Road, Stoke on Trent, ST4 2AR, Fax No. +44(0)1782 442907. Email Robert.Stanyer@ass-uk.staffs.com.
- The Customer:
The addressee, address, fax and email address set out in the contract documents.
- 14.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice sent by air mail post, 5 Business Days after posting; and
- (c) where the notice sent by fax, or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 15. General**
- 15.1 No breach of any provision of a Contract will be waived except with the express written consent of the party not in breach.
- 15.2 If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 15.3 Contracts may not be varied except by a written document signed by or on behalf of each of the parties.
- 15.4 The Supplier may freely assign its rights and obligations under a Contract without the Customer's consent to any Affiliate of the Supplier or any successor to all or substantial part of the business of the Supplier from time to time. Save as expressly provided in this Clause or elsewhere in a Contract, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
- 15.5 Each Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.
- 15.6 Subject to Clause [12.1]:
- (a) these Terms and Sales order and Sales order Acknowledgement / sales invoice will constitute the entire agreement between the parties in relation to the subject matter of the Contract, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract; and
- (c) neither party will have any liability other than pursuant to the express terms of a Contract.
- 15.7 Contracts will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract.