

TERMS AND CONDITIONS OF SALE

1. FORMATION OF CONTRACT

1.1 All quotations, offers and tenders are made and all orders are accepted subject to the following conditions ("Conditions"). Except as otherwise provided in these conditions, all other terms, conditions or warranties express or implied are excluded from any contract between the Seller and its customer (the "Buyer") unless expressly accepted in writing by the Seller. The "Seller" shall mean Fibrosil Service Limited or any group company (as that term is defined in Sections 258 and 259 of the Companies Act 1985) from time to time supplying goods to the Buyer.

1.2 If there is a conflict between the Conditions and any other alleged terms of the Seller's quotation, offer, tender or acknowledgement of order, the Conditions shall prevail unless otherwise evidenced in writing and signed and dated by both Parties.

1.3 Quotations shall be available for acceptance for a maximum period of 30 days from date of issue and may be withdrawn by the Seller by written or oral notice to the Buyer at any time prior to the Seller's acceptance. Acceptance shall only be effective where it is made on the Seller's order acceptance form ("**Sales Confirmation**") prepared by or at the direction of an authorised representative of the Seller and posted or delivered to the Buyer.

1.4 If any statement or representation has been made to the Buyer by the Seller or its officers, employees or agents of any specification additional to the Seller's standard specification (other than in the documents(s) enclosed with the Seller's quotation or acknowledgement of order), upon which the Buyer wishes to rely it shall only be entitled to do so if the statement or representation is attached to or endorsed on the Buyer's order and then only if the Seller subsequently confirms in writing, by a document signed by a director or company secretary of the Seller, to the Buyer that the Buyer is entitled to rely on the statement or representation or additional specification.

1.5 Prices are quoted by the Seller on the basis of the limitations of liability set out in these conditions. The Buyer shall be entitled to request the Seller to agree a higher limit of liability and the Seller may then quote a revised price taking account of any increased insurance premium to be borne by the Seller as other side premium, as to which see Condition 10.8 below.

1.6 The giving by the Buyer of any delivery instructions for the goods or any part thereof, or the acceptance by the Buyer of delivery of the goods or any part thereof, or any conduct by the Buyer in performance of the transaction after receipt by the Buyer of this document shall constitute unqualified acceptance by the Buyer of the Conditions.

1.7 All references to INCOTERMS shall be to the INCOTERMS 2000.

2. PRICES

2.1 Where the Seller delivers or arranges delivery of the goods, the Buyer shall be liable to the Seller for further carriage costs and any demurrage costs incurred by the Seller if vehicles are unduly delayed at the place of delivery. Where delivery is not included in the price, the Buyer shall pay all transportation and insurance costs incurred by the Seller in making or arranging such delivery.

2.2 Unless otherwise agreed in writing, all prices are quoted exclusive of VAT.

2.3 Where:-

2.3.1 any increase in the cost of labour, materials or overheads relating to the supply of the goods, or

2.3.2 any reason whatsoever beyond the control of the Seller including (without limitation) changes in exchange rates or the action of any government or authority;

2.3.3 result (or would result) in an increase in the price of the goods, the Seller reserves the right to add any increase to the quoted price or any price agreed before or after the making of the agreement to which these Conditions to reflect such increase.

2.4 The Seller reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

3. PAYMENT

3.1 Unless otherwise agreed by the Seller in writing, payment shall be due and payable on the 28th day of the month following the date of invoice and shall be made without any set-off, counterclaim or deduction whatsoever. Where any dispute arises, the Buyer shall not oppose and shall consent to the immediate enforcement of any judgement entered against it regardless of any cross-claim, set-off or counter-claim.

3.2 The Seller shall be entitled to submit its invoice with its delivery advice note or at any time afterwards except that where delivery has been postponed at the request of, or by the default of, the Buyer, the Seller may submit its invoice at any time after the goods are ready for delivery or would have been ready in the ordinary course but for the Buyer's request or default.

3.3 Where goods are delivered by instalments the Seller may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these conditions.

3.4 No disputes arising under the contract nor delays (other than delays acknowledged by the Seller in writing), shall interfere with prompt payment in full by the Buyer.

3.5 Where the contract provides for payment to be made against certification by a third party, payment shall be made in full by the 28th day of the month following the issue of the relevant certificate.

3.6 If the Buyer shall default in payment whether under this or any other contract with the Seller, the Seller shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-

3.6.1 to suspend any or all further deliveries under the contract and under any other contract or contracts between the Seller and the Buyer then current, without notice;

3.6.2 to charge interest on any amount outstanding at the rate of 3% per annum above the base rate of Royal Bank of Scotland plc, such interest being charged as a separate, continuing obligation not merging with any judgement together with all debt recovery costs;

3.6.3 to serve notice on the Buyer requiring immediate payment for all goods supplied or to be supplied by the Seller under this and all other contracts with the Buyer whether or not payment is otherwise due;

3.6.4 by its servants or agents enter the Buyer's premises and recover and dispose of the goods, and the Buyer shall not be entitled to make any claim against the Seller in respect of such entry or disposal;

3.6.5 to sue for the price of the goods to the Seller and any other sums then due or rendered due under the terms of any contract, even though title may not have passed to the Buyer or the goods have been recovered. Provided that the Seller shall give credit for the cost (excluding all profit) of any goods not supplied or recovered from the Buyer as certified by the Seller, such certificate to be conclusive proof of the cost of such goods.

3.7 Unless agreed in writing by the Seller, the Buyer shall have no right to set-off, withhold or deduct from monies due to the Seller whether in respect of any sums due from the Seller, any sums claimed to be due from the Seller or otherwise.

4. DELIVERY

4.1 Delivery of the goods within the European Union shall be on a DDU basis unless the Seller has specifically agreed otherwise in writing.

4.2 Delivery of the goods anywhere outside the European Union shall be in accordance with the EXW (at Supplier's premises), unless the Seller specifically agrees in writing to deliver the goods to the Seller, in which case delivery of the goods shall be in accordance with the DDU (at Named Place).

4.3 Time for delivery is given as accurately as possible but is not guaranteed. The Buyer shall have no right to damages or to cancel the contract for failure for any cause to meet any delivery time stated nor shall the Buyer be entitled to make, or to purport to make, time for delivery of the essence of the contract. The Seller shall in all agreements which are subject to these Conditions be entitled to deliver within 30 days of any delivery time stated.

4.4 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Buyer in connection with any act required to enable the Seller to dispatch the goods.

4.5 The Seller is to be delivered by several instalments to the Buyer, each such instalment shall be treated as a separate and identifiable contract and the rights of either party thereunder shall be construed accordingly, save only that the Seller may suspend delivery thereof whilst payment is overdue in respect of any previous instalment.

4.6 If the Seller shall fail to make delivery or shall make defective delivery of any instalment, such failure of defective delivery shall not affect the obligations of the parties under the contract of which these Conditions form part in respect of the other instalments.

4.7 The Seller will endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the goods but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Seller then, without prejudice to all other rights and remedies available to the Seller, the Buyer shall pay all costs and expenses, including a reasonable charge for storage and transportation so occasioned.

4.8 The Seller reserves the right to deliver against any order an excess or deficiency of up to 10% of weight, area or volume ordered. The goods invoiced will be the weight, area or volume actually delivered by the Seller and any resulting adjustment to the purchase price shall be proportionate to the excess or deficiency in weight, area or volume.

4.9 Weight, area or volume shall be determined on despatch. Variation of less than 1% from invoice quantity in respect of any consignment shall be disregarded.

5. PACKAGING

5.1 Packaging supplied by the Seller, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration.

5.2 Due to the nature of the goods to be supplied, the Buyer shall be responsible for ensuring the goods are kept in adequate storage conditions once delivered in accordance with Condition 4, including but not limited to protecting the goods against the effects of humidity and temperature.

5.3 The Seller shall be entitled to deliver the total weight, area or volume of any contract in containers of such varying weights and sizes as it may decide.

5.4 Where packages, pallets, drums, beams or other containers ("**Packaging**") are stated to be returnable, they shall be returned in good order and condition at the Buyer's expense to the destination named on the Seller's invoice and the Buyer shall notify the Seller of the date of despatch thereof. If any such Packaging was charged for on delivery, credit will be given when it is received at the named destination in good order and condition. If the Buyer fails within a reasonable period to return any such Packaging in good order and condition, the Buyer shall, if not so charged on delivery, be charged therefore at the Seller's standard rate.

6. RISK AND TITLE

6.1 Risk shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the goods or for any damage occurring):-

6.1.1 if the Seller is responsible for delivering or arranging for delivery of the goods, at the time when the goods arrive at the place for delivery; or

6.1.2 in all other circumstances, at the time when the goods leave the premises of the Seller.

6.2 Title to the goods shall only pass to the Buyer if the Buyer has paid to the Seller all sums (including any default interest) due from it to the Seller under this contract and under all other contracts between the Seller and the Buyer (including any sums due under contracts made after this contract) whether or not the same are immediately payable.

6.3 The Seller may recover goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences the Seller, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that Condition 6.4 below is being complied with by the Buyer or of recovering any goods in respect of which title has not passed to the Buyer.

6.4 Until title to the goods has passed to the Buyer under these conditions it shall possess the goods as fiduciary agent and bailee of the Seller. If the Seller so requires, the Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Seller. During such time as the Buyer possesses the goods with the Seller's consent, the Buyer may in the normal course of its business sell or hire the goods as principal or incorporate the goods into end products but without committing the Seller to any liability to the person dealing with the Buyer. Where any goods are incorporated into end products by the Buyer, the Buyer shall account to the Seller for any onward sale proceeds.

7. VARIATIONS

7.1 No variations to the goods required by the Buyer shall be binding on the Seller unless agreed by the Seller and the Buyer in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the goods.

7.2 Following agreement of any such variation by the Parties, any dates quoted for delivery shall be extended accordingly.

8. SAMPLE AND TESTING

8.1 The Seller reserves the right to alter the dimensions or composition of the goods supplied to conform to applicable standards or laws.

8.2 The Seller shall not alter the specification of any goods to those of its current specification for such goods from time to time ordered by the Buyer, without prior agreement of the Buyer, provided that the Seller may alter raw materials or the provider of raw materials such that the product remains in compliance with the original specification.

8.3 The Buyer is responsible for testing and examining the goods upon delivery, and in so doing shall comply with its obligations under the Food Safety Act 1990 and all other applicable laws and standards to ensure that:

8.3.1 the goods are suitable and fit for any purpose for which the Buyer intends to use said goods; and

8.3.2 the goods delivered do not contain any contamination likely to cause damage to the Buyer's property or to have an adverse effect on the Buyer's processes or products.

8.4 The Buyer shall indemnify the Seller against any loss arising or damage suffered by the Seller pursuant to any failure by the Buyer to :-

8.4.1 comply with Condition 8.3; or

8.4.2 notify the Seller pursuant to Condition 9.1 of any findings pursuant to its testing and examination of the goods under Condition 8.3.

8.5 No advertising, sales promotion or technical information or data issued by the Seller shall form part of the contract unless the Buyer shall have complied with Condition 1.4 relating to statements and representations and the Seller shall have given the confirmation referred to in that Condition.

8.6 Seller shall provide a Certificate of Analysis or Certificate of Conformity, as specified, upon the Buyer's request in respect of the goods.

9. DEFECTS AND DELIVERY DISCREPANCIES

9.1 The Buyer shall notify the Seller of:-

9.1.1 any discrepancy (subject to [Conditions 4.8 and 4.9]) between the delivered quantity of goods and the stated quantity set out on the delivery documentation (a "Discrepancy");

9.1.2 any reason (other than a change in the Buyer's requirements) whereby the goods delivered are not in accordance with the Seller's standard specification for the goods, or any specification specifically agreed and evidenced in writing under Condition 1.4 above between the parties (the "**Specification**") (a "**Defect**");

and where the Discrepancy or Defect is or should be apparent on delivery, the Buyer shall note the Discrepancy or Defect on the Seller's delivery documents.

9.2 The Buyer shall only be entitled to claim (and then subject to Condition 10) for Defects which are or would be apparent on visual inspection at the time of delivery if:-

9.2.1 the Buyer inspects and undertakes its testing of the goods within 3 (three) working days (and in any event before use of any part of the goods) following the date of their arrival at its premises or other agreed destination;

9.2.2 the Seller is notified in writing within 10 (ten) working days after the inspection or testing under Condition 9.2.1 of the particular Defect; and

9.2.3 the Seller is given a reasonable opportunity to inspect the goods and investigate any complaint.

9.3 The Buyer shall only be entitled to claim (and then subject to Condition 10) for Discrepancies which are or would be apparent on visual inspection at the time of delivery if the Seller is notified in writing within 3 (three) working days after the time of delivery.

9.4 The Buyer shall only be entitled to claim (and then subject to Condition 10) for Defects and Discrepancies which are not apparent on visual inspection at the time of delivery if:-

9.4.1 the Seller is notified in writing;

(a) within twenty-one (21) days of the Buyer discovering the Defect or Discrepancy, and

(b) the Buyer discovers the Defect or Discrepancy within 3 (three) months following the date of delivery of the goods; and

9.4.2 the Buyer makes no subsequent use of the goods or alteration or interference to or with the goods before the Seller has a reasonable opportunity to inspect the goods and investigate any complaint.

9.5 The Buyer shall indemnify the Seller against any loss arising or damage suffered through failure to inform the Seller within 3 (three) working days of the estimated date of delivery notified by the Seller in the event of non-delivery of a whole consignment.

9.6 Where the Buyer makes notification in accordance with Conditions 9.2, 9.3 or 9.4 of a Defect or Discrepancy which is objectively justified, the Seller shall (at the Seller's option):-

9.6.1 remove the delivered goods and provide replacement goods; or

9.6.2 remove the delivered goods and reimburse the Buyer (whether by way of credit note or otherwise) the price paid for those goods.

9.7 If a complaint is not made to the Seller as provided in this Condition 9, the goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to pay for the same accordingly.

10. EXCLUSION OF LIABILITY

10.1 The implied terms contained in Sections 13, 14 and 15 of the Sale of Goods Act 1979 (as amended) and Sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and any other condition or warranty implied by trade custom or usage are expressly excluded.

10.2 The Seller's sole liability shall be as set out in Condition 9 and in this Condition 10.

10.3 Save as expressly stated to the contrary herein, the Seller shall not be liable to the Buyer in respect of any loss, damage or injury, direct or indirect, resulting from defects in design, formulation, manufacture, materials or workmanship or otherwise (and whether or not caused by the negligence of the Seller, its employees or agents) other than liability for death or personal injury resulting from the Seller's negligence.

10.4 Further, under no circumstances whatever shall the Seller be liable for:-

10.4.1 losses special to the particular circumstances of the Buyer;

10.4.2 indirect or consequential losses;

10.4.3 recall costs and business disruption or interruption costs;

10.4.4 cost incurred in connection with the removal, disposal or storage of defective goods;

10.4.5 damage to goodwill or reputation;

10.4.6 loss of profits or contribution;

10.5 Each of the sub-conditions in Condition 10.4 are to be regarded as separate and severable clauses. If any sub-condition shall be or become void or unenforceable in whole or in part, the other provisions shall remain valid and enforceable.

10.6 Without prejudice to the provisions of Condition 9 or this Condition 10, the Seller's aggregate liability to the Buyer in connection or arising from any delivery of goods whether for negligence, breach of contract, misrepresentation or otherwise whatsoever shall in no circumstances exceed five times the selling price excluding VAT of the delivery of goods concerned and/or upon which such liability depends OR £20,000, whichever sum is the higher.

10.7 Without prejudice to the provisions of Condition 9 or this Condition 10, the Seller's aggregate total liability to the Buyer from all sources and whether arising in connection with any negligence, breach of contract, misrepresentation or otherwise whatsoever shall in no circumstances exceed £100,000.

10.8 The Seller's prices are compiled assuming that the limits of liability set out in these Conditions are observed. Accepting greater levels of potential liability would render the Seller's prices unacceptably risky for the return anticipated by the Seller. However, the Buyer shall have the option to choose to increase the liability caps in Condition 10.6 to ten times the selling price excluding VAT, OR £40,000, whichever is higher, if the Buyer accepts a 20% premium on the Seller's standard price for the goods. This option shall be exercised by written notice to the Seller prior to the date of delivery.

10.9 No provision of this contract shall be taken as seeking to exclude or limit, or subject to any pre-condition or requirement, any liability which by law may not be excluded or limited or subjected to such pre-condition or requirement.

11. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

11.1 All drawings, documents, records, computer software and other information supplied by the Seller, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Seller (or the third party) and that the Buyer will not, without the written consent of the Seller, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the goods in respect of which they are issued.

11.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Buyer relating to the goods must be notified immediately to the Seller. If requested by the Seller, the Seller shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the Seller thinks fit and the Buyer will provide to the Seller such reasonable assistance as the Seller may request. The cost of any such proceedings will be borne by the Seller.

11.3 If any allegation shall be made against the Buyer to the effect that the supply of such of the goods as are manufactured by the Seller infringes the intellectual property rights of any third party or the Seller has reason to believe that any such allegation is likely to be made, the Seller may at its option and expense modify or replace the goods so as to avoid the infringement (but without adversely affecting the overall performance of the goods), or obtain for the benefit of the Buyer the right to continue to use the goods, or repurchase the goods at the contract price as reduced by a reasonable provision for depreciation. If the Seller pursues any of such options, the Buyer will have no rights or remedies against the Seller arising directly or indirectly out of the alleged infringement.

12. INSOLVENCY

If the Buyer shall become bankrupt or shall be deemed to be unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986 or shall compound with its creditors or if a resolution shall be passed for the winding up or liquidation of the Buyer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager shall be appointed of all or any part of its assets or undertaking, the Seller shall be entitled to cancel the contract in whole or in part by giving written notice to the Buyer, without prejudice to any other right or remedy available to the Seller.

13. FORCE MAJEURE

13.1 The Seller shall be under no liability for any failure to perform any of its obligations under the contract if and to the extent that the failure is caused by act of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, governmental action or restriction, shortages of labour or materials or breakdown of machinery, delay in delivery by Seller's suppliers or any other cause whatsoever (whether or not similar to the foregoing) outside the control of the Seller.

13.2 In such circumstances except where goods are in transit either Seller or the Buyer may terminate the unperformed part of any contract of which these Conditions form part by notice in writing delivered to the other party hereto within 14 days of the Seller giving written notice to the Buyer of the occurrence of such action or circumstances as make the Seller fail to observe or break any of these Conditions or any contract.

14. CONSUMER PROTECTION ACT 1987 (THE "ACT")

n circumstances in which the Seller supplies goods to the Buyer for incorporation with any composite or other products to be produced, manufactured, processed or supplied by the Buyer or a third party then the Buyer shall indemnify, reimburse and compensate the Seller for all losses and damages (including costs, expenses and charges for legal actions in which the Seller may be involved) which the Seller may incur, or have to bear, if any claim or claims shall be made against the Seller relating to the composite or other products.

15. ASSIGNMENT

The contract is entered into between the Seller and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it or of any interest in it without the prior written consent of the Seller. The Seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.

16. SEVERABILITY

If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable and the void provisions shall, where appropriate, be replaced by other provisions corresponding as closely as possible with the void provisions.

17. WAIVER

17.1 A failure by the Seller to exercise, or a delay in exercising, any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the Seller may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

17.2 Any waiver by the Seller of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver by the Seller of any subsequent breach or default and shall not affect the other terms of this Agreement.

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18. THIRD PARTY RIGHTS

A person who is not a party to the Agreement (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

19. LAW AND JURISDICTION

The parties agree that any disputes arising or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and in the case of proceedings issued against the Seller shall be subject to the jurisdiction of the English courts only. Schedule 1 to the Uniform Law on International Sales Act 1967 shall not apply to the contract.