

**TERMS AND CONDITIONS OF SALE**

**CLAUSE 1. DEFINITIONS**

- 1.1 'Buyer' means the person, firm or company placing an order with the Seller.
- 1.2 'Seller' means Hilger Crystals Limited.
- 1.3 'Goods' means all Goods and materials which are the subject of the Buyer's order, or which are supplied to the Buyer by the Seller under these Conditions of sale.
- 1.4 'Contract' means the Contract formed by the Seller's acceptance of the Buyer's order.

**CLAUSE 2. FORMATION OF CONTRACT**

- 2.1 There shall be no binding agreement between the Seller and the Buyer until the Seller accepts the Buyer's order by an acceptance of order form; all verbal orders must be confirmed in writing within seven days from the date of the verbal order. Unless otherwise stated the specification of the goods will be to the Sellers' Internal General Specifications that conform to industry accepted custom and practice guidelines
- 2.2 All orders are accepted subject to the Seller's Conditions of Sales. No terms or conditions put forward by the Buyer shall be binding on the Seller.
- 2.3 The Buyer agrees that these Conditions of Sale and any specific details stated on the face of the acceptance of order form constitute the entire understanding between the parties hereto and that there are no representations, warranties, conditions and terms or obligations whether written or oral, express or implied by custom or otherwise other than those contained herein.
- 2.4 Buyer's orders may not be cancelled at any time except without the express prior agreement of the seller.

**CLAUSE 3. PRICES**

Prices are FCA (Margate) and unless otherwise expressly agreed to the contrary, the Goods shall be sold and invoiced at the Seller's prices in effect at the time of shipment of the Goods. The Seller's prices are exclusive of normal delivery charges

**CLAUSE 4. PAYMENTS**

- 4.1 Unless otherwise expressly agreed in writing by the Seller, payment shall be made in the nominated currency on the dates specified within thirty days of the Seller's invoice.
- 4.2 Without prejudice to the Seller's other rights, including the right in any event to sue for the price immediately payment becomes due whether or not property of the Goods has passed, the Seller reserves the right to charge interest to be added to the amount of any delayed payment at the annual rate of two per cent (2%) above the base of Lloyds Bank plc from time in force to be prorated on a day basis until the date of receipt of payment in full.
- 4.3 The Buyer shall not be entitled to withhold payment of any amount due under the Contract in respect of any disputed claim for damage to the Goods or in respect of any other alleged breach of Contract by the Seller, nor shall the Buyer be entitled to set-off any monies for which the Seller disputes liability against any amount due or payable to the Buyer under the Contract.
- 4.4 The Seller shall be entitled to cancel the Contract if the Buyer shall suffer any distress or execution to be levied on its Goods or if it makes any arrangement with its creditor or enters into liquidation, whether compulsory or voluntary, except for the purpose of amalgamation or reconstruction or has a receiver appointed of any of its property or assets, or if the Buyer, being an individual shall commit an act of bankruptcy or have a receiving order made against him.
- 4.5 If any payment is not made when due, the Seller shall be entitled to suspend any further deliveries under this, or any other Contract with the Buyer, and to cancel this Contract in whole or in part without prejudice to its other rights and without incurring any liability to the Buyer.

**CLAUSE 5. DELIVERY**

- 5.1 Whilst the Seller will use its best endeavours to avoid delay the Seller shall not be liable to the Buyer for any loss or damage, whether direct, indirect or consequential, if it is delayed or prevented from delivering the Goods or otherwise performing its Contractual obligations due to force majeure, act of god, natural disasters, fire, flood, explosion or earthquake, serious accidents, prohibition or limitation of exports or imports, any act of government, war, insurrection, riots, strikes or labour disturbances (whether at the Seller's works or elsewhere), shortages of materials or any other cause or event whatsoever beyond the reasonable control of the Seller.
- 5.2 In the event of the occurrence of any of the causes or events mentioned in Clause 5.1 above, the Seller may at its option either suspend performance or cancel the Contract or so much of it as remains unperformed without liability for any loss and without prejudice to the Seller's rights to receive payment of the price of all Goods previously delivered, or work already done.
- 5.3 The Seller may make delivery by instalments unless otherwise agreed. Failure by the Buyer to accept or pay for any instalment may be treated by Seller as a repudiation of the Contract.
- 5.4 Unless otherwise specified in the Seller's quotation or acceptance or order, the Seller shall arrange delivery of the Goods to the Buyer's premises, or any other delivery point indicated in the Contract and shall insure the Goods to the point of delivery. The costs of delivery and insurance to a destination outside the United Kingdom shall be for the account of the Buyer and shall be set out as a separate item on the Seller's invoice.
- 5.5 If Goods are delivered in accordance with Clause 5.4 above, the Buyer will be responsible for, and at his own expense provide all necessary labour to off load the Goods on arrival at the delivery address.
- 5.6 No claim for short delivery or damage to the Goods may be made unless notified to the Seller by registered letter or electronically within five working days of the receipt of the Goods by the Buyer.
- 5.7 Claims for non-delivery of parts must be made within 28 days of the advised date of despatch of the Goods.
- 5.8 Claims for damaged goods upon receipt due to shipper must be communicated within 48 hours and nonconforming or damaged parts must be made within 28 days of the date of delivery of the Goods.

**CLAUSE 6. RISK**

- 6.1 If the Seller arranges delivery pursuant to Clause 5.4, the Goods shall be at the Buyer's risk immediately on delivery to the Buyer's premises or any other delivery point indicated on the Contract
- 6.2 If the Buyer arranges the carriage of the Goods from the Seller's premises, the Goods shall be at the Buyer's risk immediately on delivery to the carrier and the Buyer must insure the Goods accordingly.

**CLAUSE 7. RESERVATION OF TITLE**

- 7.1 Unless otherwise notified in writing to the Buyer, until all payments due under the Contract shall have been paid in full, together with any interest and all other sums due from the Buyer, the Goods shall remain the property of the Seller and the Buyer shall store the Goods in such a way that they can be identified as the property of the Seller and shall not dispose of them without the Seller's consent in writing.
- 7.2 If the Buyer shall sell or otherwise dispose of or make any insurance claim in respect of the Goods before all payments due under the Contract, any interest and all other sums due from the Buyer have been paid in full, the Buyer shall not give any warranties or incur any liability on behalf of the Seller and the proceeds of any such sale or other disposition (or claim thereto) or any such insurance proceeds (or claim thereto) shall belong to the Seller and be held by the Buyer as trust funds to the extent of all sums due from the Buyer to the Seller.
- 7.3 If the Goods are used as a component in the production of other Goods or as part of a mixture of other Goods then such other Goods shall belong to the Seller and shall be stored so as to be identified as such and the proceeds of sale or other disposal of such Goods shall belong to the Seller to the extent of all sums due from the Buyer to the Seller.
- 7.4 Failure on the part of the Buyer promptly to pay any interest due under the Contract shall give the Seller the right (without prejudice to any other remedies) to repossess the Goods with or without prior notice and to enter any premises in which the Goods may be for the purposes of repossession.
- 7.5 Nothing in this Clause 7 gives the Buyer any right to return the Goods in whole or in part. Immediately payment becomes due under the Contract. The Seller shall have the right to sue the Buyer for such payment together with interest and all other sums due from the Buyer, notwithstanding any other provisions of this Clause 7.
- 7.6 The Seller reserves the right to transfer ownership to the Buyer of Goods supplied.

**CLAUSE 8. INSURANCE**

From the time at which risk passes under the provisions of Clause 6 hereof, the Buyer shall keep the Goods comprehensively insured to their full replacement against all risks including, but not limited to damage in shipment, naming Seller as an additional insured until final payment is made.

**CLAUSE 9. WARRANTIES**

- 9.1 Unless otherwise notified in writing to the Buyer, the Seller warrants to the Buyer that the Goods manufactured by it and sold hereunder will be free from defects in material and workmanship for a period of one year from the date of receipt thereof by the Buyer. The Seller agrees that PROVIDED the Buyer makes a full inspection of the Goods immediately upon receipt and notifies the Seller forthwith of any defects which it discovers after prior written notice from the Buyer of such defects, it shall repair or replace at the Seller's option, any such Goods (or parts thereof) which its examination discloses to have been defective and which are returned to the Seller's designated factory, transportation charges prepaid, during the warranty period. The Seller shall have no liability under this warranty for any costs other than those of repair or replacement as specified in this Clause 9.1, nor shall the Seller be liable for any labour charges involved in removal or replacement of the defective Goods or parts thereof.
- 9.2 There are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind, except those made in Clause 9.1 hereof in particular, and to the extent permissible by law, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded. In no event shall the Seller's liability to the Buyer for any breach of the above warranty exceed the price paid for the Goods with respect to which the claim is made. The Seller shall under no circumstances be liable for any indirect, consequential or incidental damages arising either from breach of any of the warranties contained in this Agreement or from any cause whatsoever, even if the Seller has been advised of the possibility of such potential loss, except liability for death or personal injury arising from the Seller's proven negligence.

**CLAUSE 10. PATENTS AND COPYRIGHT**

- 10.1 The Buyer warrants that any design or instruction furnished or given by him shall not be such as will cause the Seller to infringe any letters patent copyright registered design or trademark in the execution of the Contract, and the Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any letter patent copyright or registered designs.
- 10.2 All plans, documents, drawings and specifications published and supplied by the Seller are protected by copyright and may not be disclosed to third parties other than the ultimate user or be reproduced without the Seller's consent in writing.

**CLAUSE 11. TAXES**

The Buyer shall promptly pay when due all taxes, duties and other charges upon the export, import, sale, purchase, ownership, or use of the Goods. Prices quoted do not include such taxes, duties or other charges and Buyer agrees to indemnify the Seller. The Seller reserves the right to add the amount of any such taxes, duties or other charges paid by the Seller to the total purchase price paid by the Buyer.

**CLAUSE 12. SELLER'S REMEDIES**

No relaxation, forbearance or delay by the Seller in enforcing any of the terms and conditions herein shall prejudice, affect or restrict the right of the Seller hereunder. Nor shall any waiver by the Seller of any breach operate as a waiver of any subsequent or continuing breach thereof.

**CLAUSE 13. AMENDMENTS OR VARIATIONS**

No amendment to or variation of these conditions of sale or any part thereof shall be valid as against the Seller unless it is in writing and signed by a duly authorised representative of the Seller.

**CLAUSE 14. HEADINGS**

Headings to the Clauses in these conditions of sale are inserted for convenience of reference only and shall not affect the construction thereof.

**CLAUSE 15. SEVERABILITY**

If any provision in these conditions of Sale (or part thereof) shall be found to be invalid, ineffective or unenforceable. The invalidity, ineffectiveness or unenforceability of such provision (or part thereof) shall not affect any other provision (or the remainder of the provision of which such invalid, ineffective or unenforceable part forms part). Accordingly, all provisions (or part thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

**CLAUSE 16. GOVERNING LAW AND JURISDICTION**

All contracts incorporating these Conditions of sale shall be governed and construed in accordance with the laws of England and the Buyer agrees to submit to the jurisdiction of the English courts.