

BROWN MCFARLANE LIMITED
TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 The following definitions and rules of interpretation shall apply in these Conditions.

Buyer: the person, firm or company who purchases the Goods from the Supplier.

Conditions: these terms and conditions of sale.

Contract: any contract between the Supplier and the Buyer for the sale and purchase of Goods, incorporating these Conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Export Sale: a Contract involving the export of Goods from the United Kingdom irrespective of the method by which the export is carried out.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Supplier (including any part or parts of them).

Supplier: Brown McFarlane Limited, Company number SC121113, having its registered office at Suite 1/1 Brook Street Studios, 60 Brook Street, Glasgow G40 2AB.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to condition 16 and/or any variation under condition 22 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 These Conditions apply to all the Supplier's sales and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Supplier. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods issued by the Buyer to the Supplier shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.4 No such order or acceptance placed by the Buyer shall be deemed to be accepted by the Supplier until a written acknowledgement is issued by the Supplier or (if earlier) the Supplier delivers the Goods to the Buyer.

2.5 Any quotation is given on the basis that no Contract shall come into existence until the Supplier despatches an acknowledgement or delivers the Goods to the Buyer in accordance with condition 2.4.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the latter of the Supplier's quotation or acknowledgement of order.

3.2 Subject to condition 3.1, any samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed by the Supplier, delivery of the Goods shall take place at the Supplier's place of business.

4.2 Any dates specified by the Supplier for delivery of the Goods are intended to be estimated dates for delivery, and shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these Conditions the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds one hundred and eighty (180) days.

4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer at that time;

(b) the Goods shall be deemed to have been delivered; and
(c) the Supplier may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, those relating to storage and insurance).

4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading or unloading the Goods (as appropriate).

4.6 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Supplier upon delivery shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Buyer gives written notice to the Supplier of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Supplier for non-delivery of the Goods shall be limited to supplying the Goods within a reasonable time of the Supplier being notified by the Buyer of such non-delivery or issuing a refund of any amounts paid for the undelivered Goods.

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Supplier from the Buyer on any account.

6.3 The Buyer's right to possession of the Goods shall terminate immediately on the happening of any of the events set out in condition 9.1 below.

6.4 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

6.5 The Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.6 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Supplier to the Buyer in the order in which they were delivered to the Buyer.

6.7 On termination of the Contract, howsoever caused, the Supplier's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Supplier in writing, the price for the Goods shall be the price set out in the latter of the Supplier's quotation or acknowledgement of order.

7.2 The price for the Goods shall be exclusive of any value added tax, which the Buyer shall pay in addition when it is due to pay for the Goods.

8. PAYMENT

8.1 Unless otherwise agreed by the Supplier in writing, and subject to condition 8.4, payment of the price for the Goods is due in the currency nominated in the latter of the Supplier's quotation or acknowledgement of order (or, in the absence of nomination, in UK pounds sterling) on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Supplier has received cleared funds.

8.4 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Buyer.

8.6 Without prejudice to the rights of the Supplier under condition 9.1, if the Buyer fails to pay the Supplier any sum due pursuant to the Contract, interest shall be payable on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. TERMINATION

9.1 The Supplier shall be entitled without prejudice to its other rights and remedies to terminate wholly or in part any or every Contract or to suspend any further deliveries under any or every Contract at any time after the occurrence of any of the following events:

(a) the Buyer being in breach of an obligation under the Contract and failing to remedy the breach within 30 days of receipt of notice from the Supplier giving details of the breach and requiring the Buyer to remedy the same;

(b) the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer to be wound up or dissolved or the Buyer being otherwise dissolved;

(c) the appointment of an administrator (whether out of court or otherwise) or of the making of an administration order in relation to the Buyer, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the Buyer's undertaking, assets, rights or revenue;

(d) the Buyer being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(e) the Buyer entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;

(f) the directors of the Buyer or any other person requesting the appointment of, or giving notice of their intention to appoint, or taking any step with a view to appointing, a liquidator, trustee in bankruptcy, administrator (whether out of court or otherwise) or similar officer;

(g) the Buyer ceasing, or threatening to cease, to carry on business;

(h) any similar step or proceeding to those outlined in Conditions 9.1(b) to 9.1(g) above being taken or made in respect of the Buyer in any jurisdiction to which the Buyer is subject;

(i) any similar step or proceeding to those outlined in Conditions 9.1(b) to 9.1(g) above being taken or made in respect of any member of the Buyer's group;

(j) the Supplier reasonably apprehending that any of the events outlined in Conditions 9.1 (b) to 9.1 (i) above is about to occur; or

(k) a change of Control of the Buyer, where "Control" shall have the meaning given in section 840 of the Income and Corporation Taxes Act 1988.

9.2 The Supplier shall be entitled as a condition of resuming delivery under any Contract to require prepayment of or such security as it may require for the payment of the price of any further delivery.

10. QUALITY

10.1 The Supplier shall pass on to the Buyer the benefit of any certificate of specification in respect of the Goods (or any part of the Goods) issued by the mill which produced the Goods (or any part of the Goods).

10.2 The Supplier warrants that (subject to the other provisions of these Conditions) upon delivery the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

(b) comply with the specifications stated in the Supplier's quotation or acknowledgement of order, whichever is the latter.

10.3 The Supplier shall not be liable for a breach of the warranty in condition 10.2 unless:

(a) the Buyer gives written notice of the breach to the Supplier within a reasonable time from when the Buyer discovers or ought to have discovered the breach, which the Supplier would generally consider to be 60 days; and
(b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods; and

(c) the Buyer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.

10.4 The Supplier shall not be liable for a breach of the warranty in condition 10.2 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or
(b) the breach arises because the Buyer failed to follow the Supplier's reasonable oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Supplier; or
(d) the breach is caused by:

(i) fair wear and tear; or

(ii) neglect; or

(iii) use of the Goods for any purposes other than those for which the Goods are commonly supplied.

10.5 Subject to Conditions 10.3 and 10.4, if any of the Goods do not conform with the warranty in condition 10.2 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata rate as stated in the Contract for the Goods, provided that, if the Supplier so requests, the Buyer shall, at the Supplier's expense, return the Goods or the part of such Goods which is defective to the Supplier.

10.6 If the Supplier complies with condition 10.5 it shall have no further liability for a breach of the warranty in condition 10.2 in respect of such Goods.

11. LIMITATION OF LIABILITY

11.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.2 Nothing in these Conditions excludes or limits the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for any matter which it would be illegal for the Supplier to exclude (or to attempt to exclude); or
(c) for fraud or fraudulent misrepresentation.

11.3 Subject to condition 11.2:

(a) the Supplier's total liability in contract, tort (including negligence) or breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid or payable for the Goods as detailed in Condition 7.1; and

(b) the Supplier shall not be liable to the Buyer for any:

(i) indirect or consequential losses;
(ii) pure economic loss;
(iii) loss of profit;
(iv) loss of business;
(v) depletion of goodwill; or
(vi) claims for consequential compensation (howsoever caused).

12. ASSIGNMENT

12.1 The Supplier may assign the Contract or any part of it to any person, firm or supplier.

12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier (which shall not be unreasonably withheld).

13. FORCE MAJEURE

The Supplier shall not be in breach of Contract, or be liable for any delay or failure to perform the terms of any Contract where this is due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

14. GENERAL

14.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

14.2 The rights and remedies provided to the Buyer under the Contract shall be the sole rights and remedies available to the Buyer, to the exclusion of any rights or remedies provided at law or in equity.

14.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.4 Failure or delay by either party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.5 Any waiver by either party of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.6 A person who is not a party to a Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract.

14.7 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to the relevant party's registered office or such address as shall otherwise be notified.

15.2 Communications addressed to the Supplier shall be marked for the attention of the Managing Director.

16. EXPORT TERMS

16.1 The latest edition of incoterms shall be deemed to have been incorporated into and form part of the Contract where any Contract for an Export Sale makes reference to an incoterm on the Supplier's quotation or acknowledgement of order, whichever is the latter.

16.2 Where any Contract for an Export Sale makes reference to an incoterm (as described in Condition 16.1 above), the provisions of that incoterm shall apply to the exclusion of any other condition which is inconsistent therewith.