

AlcolockGB Terms & Conditions

The Customer's attention is in particular drawn to the provisions of condition 10.4.

1 Interpretation

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
- (a) **"Customer"** means the person, firm or company who purchases the Goods from the Company;
- (b) **"Company"** means Alcolock GB Limited, a company incorporated and registered in England and Wales with company number 05690015 whose registered office is at 9-13 High Street, Wells, Somerset. BA5 2AA;
- (c) **"Contract"** means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions;
- (d) **"Contract Price"** means the price paid for the Goods under the terms of the Contract;
- (e) **"Delivery Address"** means the place where delivery of the Goods is to take place under condition 4;
- (f) "Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);
- (g) **"Purpose"** means the purpose for which the Goods are to be used (if any) as specified in the Contract; and
- (h) **"Warranty Period"** means the warranty period in respect of the Goods which is specified in the Contract or, where no period is specified, 12 months from the date of delivery of the Goods.
- 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 vice versa.
- 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 any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company. The Customer acknowledges and agrees that it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy such Goods solely and exclusively upon and subject to these conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation from the Company is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is

valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3 Description

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company'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 in writing by the Company, delivery of the Goods shall take place at the Customer's place of business.
- 4.2 The Customer shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Save as expressly provided to the contrary in these conditions, the Company 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 Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and shall indemnify the Company from any liability in respect of the same.
- 4.6 The Customer shall provide at the Delivery Address and at its expense adequate and appropriate equipment and manual labour for loading and/or unloading the Goods.
- 4.7 The Customer shall be responsible for obtaining (at its sole expense, if any) all import licences or permits which are necessary for delivery of the Goods to the Customer.

- 4.8 If the Company delivers to the Customer a quantity of Goods of up to 50% less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the shortfall and shall pay for such goods at the pro rata Contract Price rate.
- 4.9 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.10 Each instalment shall be a separate Contract and no valid cancellation or termination of any one Contract relating to an instalment shall entitle the Customer 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 Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract Price rate against any invoice raised for such Goods.

6 Risk/title

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

6.2 Ownership of the Goods shall not pass to the Customer until the Company 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 Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 For the avoidance of doubt, the Customer must not under any circumstances whatsoever offer any of the Goods for resale or otherwise endeavour to dispose of any of the Goods in return for any form of consideration for or on behalf of the Customer (save in the event of any bona fide business sale, reconstruction or amalgamation) unless and until the Company grants the Customer its express consent in writing to the proposed resale or disposal.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases or threatens to cease trading; or
- (c) the Customer encumbers or in any way charges any of the Goods without the prior written consent of the Company; or
- (d) the Customer materially breaches the Contract and does not rectify such breach to the satisfaction of the Company within seven (7) days' notice from the Company specifying the relevant breach.

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

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises and/or property (including, without limitation, any vehicles) where the Goods are or may be stored and/or installed in order to inspect

them, or, where the Customer's right to possession has terminated, to recover them.

6.8 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in full force and effect.

7 Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the Contract Price or, where no price is specified in the Contract, the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall (unless expressly stated to the contrary in the Contract or otherwise in writing by the Company) be inclusive of all costs or charges in relation to packaging, loading, unloading, carriage, fitting, servicing but exclusive of any valued added tax and insurance.

8 Payment

8.1 Subject to condition 8.4, payment of the Contract Price is due in pounds sterling and shall be paid by the Customer as follows (unless alternative payment terms are agreed in writing by the Company):

- (a) 40% of the Contract Price on or before the earlier of the Customer executing the Contract or placing an order for Goods with the Contract; and
- (b) the remaining 60% of the Contract Price together with any other sums which may be due on or before the date the Goods are delivered or deemed to be delivered unless otherwise agreed in writing by the Company.

8.2 Time for payment shall be of the essence.

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

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

8.5 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall, at the sole discretion of the Company, be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9 Quality

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company in respect of the Goods.

9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery and for the Warranty Period only the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- (b) be reasonably fit for the Purpose; and
- (c) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has subsequently confirmed in writing that it is reasonable for the Customer to use the Goods for that purpose.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless and until:

- (a) the Customer gives written notice of the relevant defect(s) to the Company (a "Defect Notice") and, if such defect(s) is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

- (b) the Company is given a reasonable opportunity after receiving the Defect Notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:
 - (a) the Customer makes any further use of such Goods after giving a Defect Notice; or
 - (b) the defect arises because the Customer failed to follow the Company's 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 Customer alters or repairs such Goods without the written consent of the Company; or
 - (d) the defect has come about through misuse, accident, negligence or failure through electric surge brought about by the user.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract Price rate provided that, if the Company so requests, the Customer shall, at the Customer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.
- 9.7 Any Goods which are replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the Warranty Period provided under condition 9.2.

10 Limitation Of Liability

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - (a) any breach of these conditions;
 - (b) any use made by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 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.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
 - (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation by the Company.
- 10.4 Subject to condition 10.2 and condition 10.3:
 - (a) the Company'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 lower of the Contract Price or the sum of five hundred thousand pounds sterling (£500,000); and
 - (b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 Assignment

- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12 Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company 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 six (6) months, the Customer shall be entitled to give thirty (30) days notice in writing to the Company to terminate the Contract.

13 General

- 13.1 The Contract constitutes the entire agreement and understanding of the Company and the Customer relating to its subject matter and supersedes any previous agreement between the Company and the Customer.
- 13.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.3 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.
- 13.4 Failure or delay by the Company 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.
- 13.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14 Communications

- 14.1 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 email:
 - (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 14.2 Communications shall be deemed to have been received:
 - (a) if sent by pre-paid first class post, two business days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by email on a working day prior to 4.00 pm, at the time of transmission Communications addressed to the Company shall be marked for the attention of the Managing Director.