

Frimpeks Limited - Conditions of Sale

1. These conditions override any terms or conditions stipulated, incorporated or referred to by the buyer in his order, negotiations, correspondence or other documentation of whatsoever kind unless otherwise agreed in writing by Frimpeks Ltd ("the Company"). No order shall become binding until accepted by a duly authorised representative of the Company.
2. Except as provided by these Conditions of Sale all orders are accepted subject to any price variation the Company may consider necessary at the time of delivery of the goods the subject of the order ("the Goods"). Cancellation of any order shall not be made by the Buyer without written consent of the Company
3. Any date quoted for delivery is given in good faith but is approximate only and time of delivery is not the essence of the Contract.
4. The seller reserves the right to either under or over deliver the quantity called for by this contract by 10%.
5. If the Goods are required for use with any commodity, the Buyer shall satisfy himself that the materials ordered will not adversely affect or be adversely affected by that commodity. If the Goods are required for processing of any kind the Buyer shall satisfy himself that the Goods ordered are suitable for such processing.
6. Without prejudice to the generality of Condition 10(a) and subject only to Condition 10(b), the Company accepts no liability of whatsoever kind directly or indirectly resulting from or otherwise connected with:-
 - (i) Goods supplied to the Company's standard specifications or in accordance with a sample or proof submitted to the Buyer.
 - (ii) The use by the Buyer of the Goods with another commodity or for processing. Without prejudice to the foregoing if fault arises in the use of the Goods with another commodity or for processing the Buyer shall use every effort to minimise the amount of such commodity processed and shall immediately notify the Company in writing of such fault and provide to the Company all relevant details.
7. In the event of a claim by the Buyer for loss or damage for which the Company is responsible the liability of the Company shall not exceed the invoiced value of such quantity of the Goods as form the subject of the claim. For purposes hereof, loss or damage shall be deemed not to be the responsibility of the Company if arising from or otherwise connected with the circumstances specified by Condition 5.
8. A Buyer sending his own materials to the Company for processing shall at his own expenses insure such materials against loss or damage by fire whilst on the Company's premises. The Company accepts no liability for any loss incurred by a Buyer whose materials should be found unsuitable for the processing specified.
9. The Company shall be entitled (without prejudice to its other rights against the Buyer) by notice in writing to the Buyer to rescind any contract between the Company and the Buyer or to suspend delivery should the Buyer be in breach of any of his contractual obligations or should he enter into any agreement with or for the benefit of his creditors, have a Receiving Order in bankruptcy made against him or (if a corporate body) go into liquidation either voluntary or compulsory or under supervision or have a receiver, administrator or administrative receiver appointed of the whole or any part of its assets or carries out or undergoes an analogous act or proceedings under foreign law.
10. The company shall not be liable:-
 - a) to replace the Goods which arrive in damaged condition or with an apparent defect unless the Goods are signed for accordingly and a claim is made in writing within two days of delivery specifying the defect in detail.
 - b) To procure subsequent delivery of Goods not delivered or of any separate package forming part of a consignment of Goods not delivered unless a written claim is made within twenty-one days from the date of invoice, providing full details as to the non-delivery in question.
 - c) In respect of any other defect in the Goods unless it appears within six months of delivery thereof and is a defect in materials or workmanship which has arisen under their proper and normal use and maintenance and the Buyer has informed the Company in writing within seven days of the date when such defect appeared or ought reasonably to have been discoverable specifying the defect in detail.
11. (a) Except as expressly provided in Conditions 6 and 9 and subject only to Condition 10 (b) the Company shall not be liable for any expense, loss damage or other liability whatsoever whether direct or consequential arising or otherwise in connection with the Goods including but without prejudice to the foregoing liability for personal injury or death. Any condition, warranty requirement in respect of the Goods whether express or implied by statute, custom of the trade or otherwise (including but without prejudice to the generality of the foregoing any such condition, warranty or statement as to the quality of the Goods or their fitness for any particular purpose) is hereby excluded.
 - (b) Nothing contained in these Conditions shall purport to exclude or restrict any liability the exclusion or restriction of which is prohibited by Section 2(1) and Section 6(1) of the Unfair Contract Terms Act 1977 provided however that this Condition 10(b) shall not apply to any such contract as is described in Section 26(3) of the Unfair Contract Terms Act 1977.
12. The Buyer shall indemnify the Company and keep the Company fully and effectively indemnified against any and all liability, loss, costs, expenses claims or proceedings whatsoever (including any liability of the Company to any third party whether for loss or damage to property or injury to or death of any person) arising out of or in consequence of or in respect of the manufacture of the Goods or any part of the Goods or the application of any process to the Goods or any part of the Goods in accordance with or in compliance with any specification submitted by or any instruction given by or any design of the Buyer.
13. The Buyer shall not be entitled to withhold payment of any amount payable under a contract with the company because of any disputed claim by the Buyer in respect of faulty Goods or any other alleged breach of contract, nor shall the Buyer be entitled to set off against any amount payable under a contract with the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.
14. From the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed in writing title to the Goods shall remain with the company until all payments to be made by the buyer under the Contract and any other contract between the Company and the Buyer under the Contract and on any account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.
15. The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.
16. (a) Unless otherwise stated all prices or charges quoted are exclusive of VAT
 - (b) Without prejudice to its other rights the Company may (both before and after judgement) charge interest at 5% above the then current Base Rate of HSBC plc on overdue payments for the Goods.
16. (a) The Contract shall be governed by and constructed in accordance with the laws of England to the jurisdiction of whose Courts the parties agree to submit.
 - (b) If any of these conditions or any part thereof:-
 - (i) purports to exclude or restrict or limit any liability and such exclusion or restriction or limitation is prohibited or rendered void or unenforceable by any legislation to which they are subject, or
 - (ii) is itself prohibited or rendered void or unenforceable by any legislation to which it is subject, then the exclusion, restriction or limitation of the Condition or part thereof in question shall be so prohibited or rendered void or unenforceable to the extent to which it is thus prohibited or rendered void and no further and the validity of or enforceability of any other parts of these conditions shall not thereby be affected