

Conditions of Sale

1. DEFINITION

In these conditions of sale all references to “we” or “us” or “our” are to A.P.H. Industries Limited and all references to “you” or “yours” are to the person, firm, company or corporation by whom the order is given.

2. VARIATION OF CONDITIONS

All contracts are made and all orders are accepted on the following conditions and we do not agree or accept any other terms of conditions unless expressly approved by us in writing.

3. MINIMUM ORDER LEVELS

Our minimum order value is £100.00, excluding any tooling charges. If we agree to accept orders below this value they will be surcharged to give an invoice price of £100.00.

4. TERMS OF PAYMENT

Unless otherwise agreed, payment of each delivery shall be made in net cash by the 20th of the month following the date of invoice. Payment at the due date is a condition precedent to all subsequent deliveries. Time of payment is of the essence of the contract.

If any sum remains unpaid after the end of the month following the month of invoice, you may be required to pay, as liquidated damages, a surcharge of 2.5% of the unpaid sum for each month or part of a month during which it remains unpaid. Any such surcharge will be due for payment immediately on invoice and will itself be liable to surcharge.

5. QUOTATIONS

Our quotations which will normally include delivery dates are valid for 28 days with regard to price and 14 days with regard to delivery dates. We reserve the right to withdraw any quotation at any time prior to your acceptance. Any descriptive specifications, illustrations, drawings and particulars of weights and dimensions submitted in connection with our quotation or otherwise are approximate only and shall not form part of daily contract.

6. PRICES

Our prices include normal packaging costs unless otherwise specified. We reserve the right to increase our prices at any time before delivery by giving you notice in writing. In such a case you may cancel the contract by notice in writing within seven days of the date of notification of the increase.

Our domestic prices include carriage on orders valued at £500 or over. On orders below £500 in value you will be charged in accordance with the scale prevailing at the time. If overnight or same day deliveries are requested you will be charged of the prevailing rate irrespective of order value. Details of our current charging rates and procedures are available on request from our sales office.

If no price has been quoted we will charge a reasonable price calculated in accordance with prevailing rates of previous quotations suitably adjusted.

We reserve the right to make reasonable extra charges if the information presented to us for the purpose of preparing a quotation differs significantly from the manufacturing instructions or specifications subsequently supplied for the purpose of manufacture or supply.

You are not entitled to make any deduction from the price of the goods in respect of any set-off or counter-claim unless we have agreed in writing both the amount and validity of such claim.

7. QUANTITIES

We endeavour wherever possible to deliver the amount of goods specified on any order. We reserve the right, however, to deliver an excess up to 10% without any liability on our behalf, save for a variation, pro rata in the invoiced price. By prior agreement with you we may deliver a deficiency of up to 5% without any liability on our behalf, save of a variation, pro rata in the invoiced price.

8. SEPARABILITY

Each delivery or part delivery under a contract is to be considered a separate contract, and failure on our part to make any delivery or part delivery shall not affect or vitiate the contract as a whole.

9. DELIVERIES

All indications as to the time of completion and delivery are deemed to be estimates only and we are not to be held responsible for any delay. All estimates given for delivery are understood to date from the receipt of your written order and sufficient information for us to proceed uninterruptedly. Time of delivery shall not be of the essence of the contract.

When the contract provides for installation you will provide at your expense, suitable access to and possession of the site, proper foundations ready to receive the goods, all masons joiners and builders work, all necessary facilities and adequate assistance for erection and tests, all necessary services including water, steam, electricity, gas, compressed air and drainage.

Goods on your site are at your sole risk and in the event of any loss or damage prior to completion of the contract we shall be entitled to full payment for replacing such goods or reinstating any installation work associated therewith. Accordingly you should insure the goods against such risks as you consider necessary.

10. NOTIFICATION OF DAMAGE OR LOSS

Any claim in respect of discrepancy in numbers must be made in writing within seven days from receipt of the goods. Claims made after seven days will not be recognised and the goods will then be deemed to be in all respects in accordance with the contract and you will be bound to accept and pay for them accordingly.

Any claims for damage or loss of goods in transit must be submitted in writing to the carrier and to us within three days of delivery.

Any claims for non-delivery of the whole of any consignment or order must be submitted in writing to the carrier and to us within ten days of your receiving our invoice or advice note, whichever is the earlier.

In the absence of notification of claims within the times mentioned above the goods shall be deemed to have been delivered in accordance with the contract.

11. RETURNS

You are not entitled under any circumstances, to return goods to us without prior consent.

12. PASSING OF RISK AND PROPERTY

(a) Risk in the goods shall pass to you on arrival at your premises, however no property in the goods shall pass to you until we have received payment in full for them. Until property has passed you will hold the goods as your bailee in a fiduciary capacity.

(b) Until property in the goods has passed, you must keep them free from any charged, lien or other encumbrance.

(c) In the event of your entering into bankruptcy or liquidation, or having a Receiver appointed, or having a Winding Up Order made against you, or your entering into any arrangement or composition with your creditors, all sums payable by you shall immediately become due and we may, without any prejudice to any other remedies, terminate any subsisting contracts and may without prior notice enter any of your premises at any time and retake possession of your goods in respect of which property has not passed.

You shall not be entitled to impede us in any way from exercising these rights and will give us any assistance which we may reasonably request.

(d) Until property has passed you will hold the goods as our bailie in a fiduciary capacity. You may resell the goods or incorporate them into other articles in the ordinary course of business. In exercising this right you will be acting on your own account and not as our agent. The fiduciary

relationship shall continue in respect of the proceeds of sale and these must first be used to discharge the debt to use in priority to any other claim. At our request you will immediately assign any unpaid debts arising from such sales to third parties of our goods (or articles incorporating our goods) in respect of which property has not passed prior to the sale. We shall have the rights to pursue such debts and thereafter return to you any monies received in excess of sums owing and our reasonable costs and expenses in pursuit of the claim. Our rights under this clause are an addition to any other rights which we may have.

(e) Until property in the goods has passed you must whenever requested by us to do so mark the goods conspicuously as being our property and ensure that such marking is not removed or obliterated and must promptly identify and show any of the goods to us or our representative.

(f) Until property in the goods has passed you must notify us of any circumstances which might give rise to the taking (whether lawful or otherwise) of the goods or of the actual or attempted taking of them.

(g) We may maintain an action for the price of the goods sold notwithstanding the fact that the property in them may not have passed to you.

13. WARRANTIES AND GENERAL LIABILITIES

(a) We warrant that the goods are manufactured with reasonable skill and care and are of normal industrial quality. Save for this all other conditions, guarantees or warranties whether express or implied by statute, common law or otherwise including (but without prejudice to the generality of the foregoing) conditions, guarantees and warranties as to quality or fitness for use under any specific conditions, whether known or made known to us or not, are hereby excluded.

(b) We shall be under no liability in contract or in tort for any consequential loss or damage attributable to the goods howsoever arising except for death or personal injury resulting from our negligence within the meaning of Section 1 of the Unfair Contract Terms Act 1977.

(c) The application, use and processing of the goods is your absolute responsibility. Any technical or other advice, information and data provided by us, whether verbally, in writing or by way of trials or tests, is given without warranty and you will be deemed to have carried out your own tests to ensure the suitability of the goods for their intended purposes and applications.

(d) Our liability is limited to the replacement of any goods which do not conform to this warranty, provided that you give notice promptly in writing of any claim. Under no circumstances shall we be liable for any such claim notified to us later than twenty eight days after delivery of the goods. It is a condition precedent of our liability under this clause that you satisfy us that the goods were properly handled, carried, stored and maintained after they were delivered to your premises.

(e) The foregoing paragraph (a) to (d) inclusive shall apply save that if any Act of Parliament or other statutory provisions for the time being in force shall void or make unenforceable any of the provisions thereof such paragraphs shall be deemed to apply with the exclusion of those provisions which shall be void or unenforceable as aforesaid.

14. PATENTS AND TRADE MARKS

You shall indemnify us against any costs, claims or expenses arising out of any action for infringement or alleged infringement of any patent, trade mark, registered design, copyright or any other claim resulting from compliance with your instructions whether express or implied.

15. SPECIFICATION ALTERATIONS

We will manufacture goods in accordance with our normal production standards. We shall not be liable for any extra instructions or changes in specifications not received by us in writing prior to

commencement of manufacture. We reserve the right to amend our prices and delivery dates on receipt of any instructions for variations.

16. METHOD OF DELIVERY

The method of delivery will be chosen by us. Unloading facilities including any special equipment shall be provided by you at your expense. If, by reason of instruction, or lack of instructions by you, delivery is delayed for fourteen days after you have been notified that the goods are ready for despatch, you will be deemed to have accepted the goods and payment will become due as though the goods had been delivered. As far as our storage facilities permit, we will arrange storage and charge you 1% of the invoice value per week up to a maximum of 10% of the invoice value.

17. RETURNABLE CONTAINERS

Where containers or pallets are stated to be returnable, they shall remain our property and shall be returned to us in good order and condition at your expense. If any container or pallets are charged for, credit will be given when they are returned in good order and condition to our premises. If you fail within a reasonable period to return any such containers or pallets not charged for on delivery, you will be so charged at our normal rates prevailing at that time.

18. CANCELLATION

You may not cancel or suspend orders, either in whole or in part without our prior written consent. If we accept cancellation or suspension, we reserve the right to make a charge for any costs or losses incurred and any inconvenience suffered.

19. FORCE MAJEURE

We shall be relieved of our obligations under any contract to the extent that the fulfilment of such obligations is prevented or impeded by shortage of raw materials, components or services, by Act of God, War, national emergency, laws or regulations of country, industrial dispute, civil commotion, fire, tempest, flood or any other cause outside our control.

20. WAIVER

Waiver of any or all of these conditions shall not prejudice our rights and remedies in respect of any subsequent breach, non-performance or non-observance by you of the conditions of this contract.

21. ASSIGNMENT

You will not, without our prior written consent, assign or transfer or purport to assign or transfer the contract to which these conditions relate or the benefit thereof to any other corporation or person whomsoever.

22. HEADINGS

The headings of the paragraphs of these conditions are inserted only for the convenience of reference and shall not affect their interpretation.

23. PROPER LAW

The construction, validity and performance of the contract shall be governed by English law and all disputes and questions which may arise out of or in connection with or in relation to the contract shall be decided by English Courts.