

THE CONVEYOR BELT CO (SCOTLAND) LTD

CONDITIONS OF SALE

1. Definitions

- 1.1 "Company" means The Conveyor Belt Co (Scotland) Ltd.
1.2 "Customer" means the addressee specified overleaf.
1.3 "Goods" means all and any items included in this order and supplied by the Company.
1.4 "Services" means any and all work and services to be carried out and/or provided by the Company pursuant to this order.

2. General

- 2.1 All quotations, tenders, offers, agreements and orders accepted by the Company shall be deemed to incorporate these terms and conditions. No amendment to or substitution for these terms and conditions shall be binding on the Company unless specifically accepted by the Company in writing and signed by a director of the Company.
2.2 If the Company provides Services for the Customer at the Customer's premises or on the Customer's behalf elsewhere, all prices for such Services quoted by the Company shall be estimates only and shall not be binding on the Company. The Company may make additional charges for attending the Customer's premises or if elsewhere, the premises where the work is carried out where in the Company's absolute opinion such attendance was unnecessary or where circumstances require additional work beyond that envisaged by the Company in estimating the price of the Services.

3. Quotation and Orders

Quotations given by the Company do not constitute offers made by it. Orders or variations to orders must be confirmed in writing by the Customer. No order from the customer shall create a binding contract until accepted by the Company in writing. No variation to an order shall be binding upon the Company until accepted by it in writing and the Company shall be entitled to charge the Customer for any additional costs arising from such variation. Should the Customer cancel an order for any reason the Company shall be entitled to charge for any costs incurred or contracted for up to the time of cancellation. Any such cancellation must be communicated to the Company in writing and shall not apply until the Company receives such written notice.

4. Catalogues etc.

All drawings, photographs, instructions, dimensions, weights, catalogues and price lists constitute advertising material and are supplied for information only. Any prices or other information contained therein are indicative only and shall not be binding on the Company.

5. Prices

All prices for Goods are quoted in sterling and are ex-works. VAT, carriage, packing, insurance and currency conversion costs will be charged extra unless otherwise agreed by the Company in writing. The Company reserves the right to charge a minimum invoice value. Conversion of any price into any currency shall be calculated using the rate of exchange prevalent to the Bank of England, at the discretion of the Company.

6. Settlement of Account

Payment shall be made of the net invoice amount within 30 days of date of invoice unless otherwise agreed by the Company in writing.

7. Default in Payment

If any invoice becomes overdue for payment the Company shall be entitled to take any or all of the following actions without notice to the Customer:

- 7.1 to suspend or delay the dispatch of, or work on, any outstanding orders;
7.2 to cancel credit facilities in the Customer's name, to retract any trade or quantity discount granted on an invoice and to issue a further invoice for such discount retracted and to require payment in advance for any outstanding orders or part orders before proceeding with any further work or dispatch;
7.3 to charge interest on overdue accounts at the rate of 8 per cent above the Company banker's base rate in force from time to time, such interest to be charged from the date of invoice until the date payment is received by the Company at its registered office as well after as before judgment and
7.4 to cancel any contracts made with the Customer and to charge the Customer for any costs incurred or contracted for up to the time of such cancellation.

8. Delivery

Time of delivery shall not be of the essence and any time or date quoted by the Company for supply of Services or delivery or availability of Goods for collection is given as an estimate only. The Company shall not be liable for any loss, damage or expense howsoever arising from any delay in supply of Services or delivery or availability for collection of Goods. The Company at its discretion reserves the right to supply any order in installments unless otherwise expressly provided in the order.

9. Damage/Loss in Transit

Where the price of goods includes delivery, the Company will be liable at its discretion to repair or replace free of charge, Goods lost or damaged in transit within a reasonable time of receipt by the Company of proof of such loss or damage. The Customer must give written notice both to the Company and to the carriers within 10 days of the invoice date in the case of non-delivery, and within 3 days in the case of damaged Goods or short delivery. Following the repair or replacement of such lost or damaged Goods, the Company shall have no other liability to the Customer whatsoever in respect of such Goods.

10. Risk

From the time of delivery or collection of the Goods by the Customer or his appointed carrier the Goods shall be at the risk of the Customer who shall be solely responsible for their safe custody and maintenance. The Customer shall keep the Goods insured against loss or damage and shall receive any insurance proceeds as trustee for the Company.

11. Title and Lien

- 11.1 Property in the Goods and any goods previously supplied and identifiable as the Company's goods but which have been paid for ("Paid Goods") shall not pass until the Customer shall have paid the Price plus VAT in full and no other sums whatever shall be due from the Customer to the Company ("Full Payment"). The Company may at its discretion appropriate any payments received from the Customer to any outstanding invoice.
11.2 Until Full Payment the Customer shall hold the Goods and the Paid Goods and each of them on a fiduciary basis as bailee for the Company and shall store the Goods and the Paid Goods away from all other goods in its possession marked in such a way that they are clearly identifiable as the Company's property.
11.3 The Customer shall only be free to re-sell or use the Goods and the Paid Goods on the understanding that it holds on trust for the Company either the product in the manufacture of which the Goods or the Paid Goods were used or the proceeds of the sale received by the Customer under any contract that includes any of the Goods or the Paid Goods. Until Full Payment the entire proceeds of sale shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.

- 11.4 If the Customer fails to make any payment to the Company when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Company has reasonable cause to believe that any of these events is likely to occur, or if any of the other events listed in paragraph 14 below occur, or following a request from the Company to deliver up such of the Goods or the Paid Goods as have not ceased to be in existence or re-sold to the Company the Customer fails to do so, the Company shall have the right, without prejudice to any other remedies:

- 11.4.1 to enter without notice any premises where Goods or Paid Goods may be situated and repossess the Goods or Paid Goods.
11.4.2 to require the Customer not to re-sell or part with possession of any Goods or Paid Goods owned by the Company until the Customer has made Full Payment.
11.4.3 to withhold delivery of any undelivered Goods and stop any Goods in transit.
11.4.4 to require that the Customer assigns to the Company free of charge the Customer's rights to unpaid resale proceeds in respect of any of the Goods for which payment has not yet been made.
Unless the Company expressly elects otherwise, any contract between it and the Customer for the supply of Goods shall remain in existence notwithstanding any exercise by the Company of its rights under this clause.
11.5 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods or Paid Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so all sums whatever owing by the Customer shall forthwith become due and payable.

12. Warranty

- 12.1 The Company warrants that the Goods and/or Services will be free from defects in workmanship at the date of delivery of Goods or supply of Services and the Company will at its option refund the purchase price of or repair or replace free of charge any Goods or re-perform and correct the Services which its examination confirms are defective provided:
12.1.1 the Customer makes a full inspection of the Goods immediately upon delivery and of the Services within 3 days of the completion of the work carried out,
12.1.2 the Customer notifies the Company forthwith of any defects which it discovers,
12.1.3 the Customer has used the Goods in accordance with the recommended application and any other instructions or recommendations of the Company
12.1.4 the Goods and/or the work carried out have not been adjusted, altered, adapted or repaired by any party other than the Company,
12.1.5 the Goods are either made available to the Company for inspection or returned to the Company at the Customer's own expense, as the Company may request.
12.2 In no circumstances shall the Company's liability to the Customer for any breach of warranty exceed the price paid for the Goods or the Services with respect to which the claim is made and where work is carried out to the Customer's specification the Company shall have no liability where such liability arises out of the Company complying with the Customer's specification.
12.3 Except as provided for in these conditions of sale, there are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded.

13. Liability

- 13.1 The Company shall under no circumstances be liable for any indirect, special or consequential loss (including loss of anticipated profit or third party claims) howsoever arising either from breach or non-performance of any of its obligations under this Agreement or from the supply of the Services or the supply of or use of the Goods, even if the Company has been advised of the possibility of such potential loss, except that nothing in these conditions of sale shall have the effect of excluding or limiting the Company's liability for death or personal injury caused by the Company's proven negligence or liability under the Consumer Protection Act 1987.
13.2 The Customer shall fully indemnify the Company in respect of all actions, suits, claims, demands, costs, charges or expenses arising from the breach or non-performance of any of the Customer's obligations under this Agreement or from the use of the Goods by the Customer.
13.3 The Company makes no representation or warranty that use of the Goods does not infringe the rights of any third party and the Company accepts no liability in this respect.

14. Termination

The Company may terminate any supply or other contractual obligation to the Customer without notice if:-

- 14.1 the Customer is in breach of this Agreement or any other Agreement with the Company (such breach, if remediable, not having been remedied within 7 days of notice from the Company of such breach); or
14.2 any judgment against the Customer is unsatisfied for 14 days; or
14.3 being an individual the Customer dies or commits any act of bankruptcy or being a corporation the Customer enters into liquidation or suffers the appointment of a receiver, administrative receiver or any events analogous to any of the foregoing shall happen in any jurisdiction.
Should the Company terminate under any of the provisions of this clause, any credit facilities granted to the Customer shall be withdrawn and all outstanding amounts including any amounts not yet invoiced shall become due for payment immediately. In addition the Company shall be entitled to set-off any amounts owed by it to the Customer against any amounts due to it from the Customer. These rights of the Company shall be without prejudice to any claim or right which the Company might otherwise have against the Customer.

15. Indulgence

No indulgence or forbearance extended by the Company to the Customer shall limit or prejudice any right or claim available to the Company.

16. Regulations and Labelling

The Customer shall be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any necessary import or export licences, customs clearance, exchange control consent and other authorisations and permits whatsoever and the Customer shall ensure that the Goods are at all times labelled in such a way as to ensure the safety which a person is entitled to expect from the Goods.

17. Force Majeure

The Company shall not be liable to the Customer for any loss or damage caused to or suffered by the Customer as a direct or indirect result of the supply of the Goods or Services by the Customer being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Company including, without limitation, circumstances affecting the provision of all or any part of the Goods by the Company's usual source of supply or delivery by the Company's normal route or means of delivery.

18. Severability

Any provision of these conditions held by a Court of Law to be invalid shall be severable and shall not affect the validity or enforceability of any other provision.

19. Interpretation

All contracts between the Company and the Customer shall be deemed made in Scotland and shall be governed exclusively by Scottish Law.