

FIXFIRM'S CONDITIONS OF SALE ("Conditions")

1 INTERPRETATION

1.1 The following definitions and rules of interpretation in Condition 1 shall apply to these Conditions:
Account: the credit account (if any) provided to the Buyer by Fixfirm.
Buyer: the person, company, partnership or other type of organisation that enters into a Contract.
Contract: any contract between Fixfirm and the Buyer for the sale and purchase of Goods in accordance with and subject to these Conditions.

Fixfirm: Fixfirm Limited (CRN: 7998761) of Pyke Road, Lincoln LN6 3QS.

Goods: goods ordered by the Buyer from Fixfirm under a Contract.

1.2 References to the masculine include the feminine and the neuter, and the singular include the plural and, in each case, vice versa. Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.

1.3 Headings do not affect the interpretation of the Conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.2, the Conditions apply to all Contracts to the exclusion of all other terms and conditions. No terms or conditions of the Buyer (whether endorsed on, delivered with, or contained in the Buyer's purchase order or other documents) shall form part of any Contract and, subject to Condition 2.2, any attempt by the Buyer to exclude, vary or limit any Conditions shall be void.

2.2 Any variation to the Conditions, and any representations about the Goods, shall have no effect and shall not form part of the Contract unless agreed in writing by Fixfirm.

2.3 Fixfirm may provide the Buyer with an oral or written quotation. A quotation so provided is an invitation to treat by Fixfirm to sell the Goods, subject to the Conditions, to the Buyer. A quotation is valid for 30 days from its date, provided that Fixfirm has not previously withdrawn it.

2.4 An acceptance of a quotation or the placing of an order by the Buyer shall be deemed to be an offer, subject to the Conditions, to purchase the Goods stated therein from Fixfirm.

2.5 No quotation accepted or order placed by the Buyer shall be deemed to be accepted by Fixfirm until Fixfirm confirms acceptance orally or in writing or, if earlier, delivers the Goods.

2.6 No binding Contract will come into existence until an order acknowledgement is given by Fixfirm in accordance with Condition 2.5 or, if earlier, by Fixfirm delivering the Goods.

3 DESCRIPTION

3.1 The description of the Goods is set out in Fixfirm's quotation, order acknowledgement or product catalogue. Any and all descriptions, specifications, and illustrations and any advertising or other materials issued by Fixfirm, or contained in Fixfirm's catalogue or website, are approximations and for information only, should not be relied on by the Buyer as precise or construed literally and shall not form part of the Contract.

3.2 Fixfirm is entitled to alter any materials referred to in Condition 3.1 at any time without notice.

4 DELIVERY

4.1 Unless otherwise agreed in writing by Fixfirm, delivery of the Goods shall take place at Fixfirm's place of business or the delivery address set out in the Contract or in the Account application form ("Delivery Point").

4.2 Any dates specified or agreed to by Fixfirm for delivery of the Goods are intended to be an estimate only. Time for delivery shall not be, nor shall it be made by notice, of the essence. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Fixfirm may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract and shall be a separate Contract. 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.

4.4 The Buyer shall, at its expense, provide adequate and appropriate equipment and manual labour (if appropriate) for unloading the Goods at the Delivery Point. The Buyer must inspect and check the Goods on delivery to ensure that they conform to the order and the Buyer's requirements. At the time of unloading an authorised representative of the Buyer must sign the delivery note (or the equivalent documentation of a carrier) to confirm that the Goods are as ordered and undamaged.

4.5 Fixfirm's record of the delivery date and quantity and description of Goods delivered to the Buyer shall be conclusive evidence of such, unless the Buyer can provide conclusive contrary evidence.

4.6 If the quantity of Goods delivered to the Buyer is up to 10% more or less than the quantity ordered, the Buyer is not entitled to reject all or any of the Goods for this reason and shall pay for any surplus, or shall be issued with a credit note for any shortfall, at the pro rata Contract rate.

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

4.7.1 the Goods will be deemed to have been delivered for the purposes of Conditions 5 and 6; and

4.7.2 Fixfirm may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.8 Fixfirm shall not be liable for delivering the wrong Goods or for any non-delivery of or damage to or shortfall in the Goods (even if caused by Fixfirm's negligence) unless the Buyer notifies Fixfirm in writing within 3 days of the agreed delivery date.

4.9 Fixfirm's liability for claims under Condition 4.8, as a result of the Buyer complying with the notice requirements, is limited to, at Fixfirm's option, replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate.

5 RISK/TITLE

5.1 The risk in the Goods shall pass to the Buyer on delivery. Title in the Goods shall not pass to the Buyer until Fixfirm has received (in cash or cleared funds) from the Buyer:

5.1.1 the full Price for the Goods plus VAT; and

5.1.2 all other sums which are due to Fixfirm from the Buyer.

5.2 Until title in the Goods passes in accordance with Condition 5.1, the Buyer shall:

5.2.1 hold the Goods on a fiduciary basis as Fixfirm's bailee;

5.2.2 store the Goods (at no cost to Fixfirm) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Fixfirm's property;

5.2.3 not remove, destroy, deface or obscure any identifying mark or packaging in relation to the Goods;

5.2.4 maintain the Goods in satisfactory condition, keep them insured on Fixfirm's behalf for their full Price against all risks and provide Fixfirm with a copy of the insurance policy on request; and

5.2.5 deliver up the Goods to Fixfirm on demand.

5.3 The Buyer may only resell the Goods before title has passed if such sale is a sale of Fixfirm's property on the Buyer's own behalf as principal, made in the Buyer's ordinary course of business and at the full market value.

5.4 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer:

5.4.1 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 or manager or 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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

5.4.2 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or encumbers or in any way charges any of the Goods; or

5.4.3 fails to perform any of its obligations under any Contract.

5.5 Fixfirm shall be entitled to recover payment for the Goods notwithstanding the fact that title in any of the Goods has not passed from Fixfirm to the Buyer.

5.6 The Buyer grants Fixfirm, 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.

5.7 Where Fixfirm 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 Fixfirm to the Buyer in the order in which they were invoiced to the Buyer.

5.8 Should Fixfirm repossess any Goods or the Buyer delivers up any Goods, in accordance with this Condition 5, the Contract in respect of those particular Goods is rescinded.

6 PRICE AND PAYMENT

6.1 Unless otherwise agreed by Fixfirm in writing and subject to Condition 6.2, the price for the Goods shall be the price stated in the quotation or order acknowledgement provided by Fixfirm to the Buyer in accordance with Condition 2.3, together with any VAT and delivery costs ("Price").

6.2 The Price is based on the cost of materials, labour, transport, taxes and duties and all other relevant costs at the date of the quotation and/or order acknowledgement. Fixfirm reserves the right to vary the Price to take account of any variation (howsoever arising) in these costs or the imposition of any new taxes or duties between the date of the quotation and/or order acknowledgement and the delivery date.

6.3 For Buyers with an Account that has not reached its credit limit each invoice submitted by Fixfirm shall be paid by the 28th day of the month following delivery. For Buyers without an Account, or with an Account that has reached its credit limit, Goods shall be paid for at the time of the order or on delivery as directed by Fixfirm. Time for payment shall be of the essence.

6.4 Fixfirm reserves the right to exercise its absolute discretion and cancel the Account by notice.

6.5 Fixfirm reserves the right to suspend the Account if it decides, for whatever reason, that it requires further security from the Buyer, other than that already provided (if any), for the performance and discharge of the Buyer's obligations under any Contract or for any other reason it considers reasonable. The Buyer agrees to use its best endeavours to ensure that any additional security required by Fixfirm (including, but not limited to, a third party providing additional guarantee) is provided. Fixfirm may decide to reinstate the Account if the Buyer provides the additional security required or meets any other conditions required to be satisfied by Fixfirm.

6.6 If Fixfirm exercises its right to cancel or suspend the Account, in accordance with Conditions 6.4 and 6.5 respectively, all sums owed to Fixfirm by the Buyer at the date of cancellation or suspension shall be payable on demand and Fixfirm may continue trading with the Buyer on the basis set out in Condition 6.3 for Buyers without an Account.

6.7 No payment shall be deemed to have been received until Fixfirm has received cash or cleared funds and all sums payable to Fixfirm under a Contract shall become due immediately on its termination, howsoever arising.

6.8 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 Fixfirm to the Buyer.

6.9 Without prejudice to any of its other remedies, if any amount due from the Buyer is not paid in accordance with the Conditions Fixfirm may do all or any of the following:

6.9.1 treat any or all Contracts as repudiated by the Buyer;

6.9.2 without notice suspend or cancel delivery of the Goods under the Contract, and any other Contract, until the Buyer pays the outstanding amount(s) in full;

6.9.3 appropriate any payment made by the Buyer under any other Contract with Fixfirm to pay for any outstanding amounts as Fixfirm may, in its sole discretion, think fit;

6.9.4 claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7 QUALITY

7.1 Subject to Conditions 7.2 to 7.4, Fixfirm warrants that the Goods supplied shall be free from manufacturing defects for the lifetime of the Goods.

7.2 Subject to Conditions 7.3 to 7.5, if any of the Goods do not conform with the warranty in Condition 7.1 Fixfirm shall, at its option, repair or replace the Goods (or the defective part) or issue a credit note at the pro rata Contract rate, provided that:

7.2.1 the Buyer gives written notice of any defect in the Goods to Fixfirm within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

7.2.2 Fixfirm is given a reasonable opportunity, after receiving such notice, to examine the relevant Goods and the Buyer (if asked to do so by Fixfirm) returns such defective Goods (or the relevant part) to Fixfirm's place of business at the Buyer's cost.

7.3 Condition 7.2 shall not apply if the defect arises as a result of normal wear and tear, the Buyer's negligence or failure to comply with the Conditions or failure to follow Fixfirm'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 the Buyer makes any further use of the Goods after giving notice or the Buyer alters, modifies, mishandles or repairs such Goods.

7.4 If Fixfirm complies with Condition 7.2 it shall have no further liability for a breach of the warranty in Condition 7.1 in respect of such Goods. Any Goods replaced shall belong to Fixfirm and any replacement Goods shall be provided to the Buyer with the benefit of the warranty in Condition 7.1.

7.5 Fixfirm's reasonable opinion as to the cause of the defect shall be final and binding unless the Buyer can provide conclusive evidence to the contrary.

8 LIMITATION OF LIABILITY

8.1 The Buyer must ensure that the Goods meet its requirements and are suitable for its purposes and Fixfirm shall not be liable for the Buyer's failure to do so. Any recommendations made by Fixfirm are made in good faith, do not constitute a guarantee and cannot be relied on by the Buyer.

8.2 Subject to Conditions 4.9 and 7, Condition 8 sets out the entire financial liability of Fixfirm (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of the Conditions, any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.

8.3 Subject to Conditions 8.4, and 8.5:

8.3.1 Fixfirm shall not be liable to the Buyer 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.

8.3.2 Fixfirm's total liability in contract, tort (including breach of statutory duty or negligence), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Contract shall be limited to £10,000. If the Price is greater than £10,000, Fixfirm's liability shall be limited to the Price.

8.4 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.

8.5 Nothing in these Conditions excludes or limits Fixfirm's liability for death or personal injury caused by Fixfirm's negligence, or for fraud or fraudulent misrepresentation.

9 FORCE MAJEURE

Fixfirm reserves the right to defer the date of delivery or cancel the Contract or reduce the volume of the Goods (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental action, war or national emergency, act of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to Fixfirm's own workforce), or restraint or delay 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 30 days, the Buyer shall be entitled to give notice in writing to Fixfirm to terminate the Contract.

10 INDEMNITY

The Buyer shall be liable to pay Fixfirm (on written demand) for, and indemnify Fixfirm against, all reasonable costs, expenses, charges and losses sustained or incurred by Fixfirm (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation, damage to property, loss of opportunity to deploy resources elsewhere, legal costs on an indemnity basis) arising directly or indirectly from the Buyer's fraud, negligence or failure to comply, or unreasonable delay in complying, with any of the Conditions.

11 GENERAL

11.1 On termination of the Contract, howsoever caused, Fixfirm's rights in Conditions 5 and 6 shall remain in full force and effect.

11.2 Each right or remedy of Fixfirm under the Contract is without prejudice to any other right or remedy available to Fixfirm whether under the Contract or not.

11.3 If any provision of the Contract is found by any court 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. In the event that such court or administrative body of competent jurisdiction decides that such provision is not severable, the parties agree to substitute the relevant provision with a legal, valid, enforceable and reasonable provision which achieves, to the greatest extent possible, the same effect as the original provision.

11.4 Failure or delay by Fixfirm 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 or otherwise. Any waiver by Fixfirm of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

11.5 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.

11.6 The formation, 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.