

EXTRUFLEX UK LIMITED
TERMS AND CONDITIONS OF SALE

1 Interpretation

1.1 In these conditions, unless the context otherwise requires;

“**Buyer**” means the person, firm or company who purchases the Goods from the Seller.

“**Contract**” means any one or more contracts for the sale of Goods howsoever made between the Seller and the Buyer.

“**Force Majeure Circumstances**” means circumstances beyond the Seller’s control, including but not limited to fire, flood, storm, act of god, war, riot, civil commotion, strikes, lock out and other industrial action.

“**Goods**” means any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

“**Intellectual property rights**” means patents, copyrights, registered and unregistered design rights, registered and unregistered trade and service marks, confidential information and such rights are protected by the law of passing off.

“**Price**” means the price or prices for the Goods referred to in condition 3.1

“**Seller**” means Extruflex UK Limited of Unit J2 Carlton Drive, Pen-Y-Fan Industrial Estate, Crumlin, Newport, NP11 4EA (Company No. 02495276)

1.2 The headings in these conditions are of convenience only and shall not affect their interpretation.

1.3 The use of any gender includes the others. The use of singular includes the plural and vice versa.

1.4 The use of the word “including” is only intended to illustrate particular examples, and its use and the use of such examples are not intended to limit in any way whatsoever, the interpretation or construction of these conditions or any other words in these conditions.

1.5 Any obligation of a party not to do something includes an obligation not to permit or authorise the doing of it.

2 General

2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer 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 Buyer'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 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.4 Any quotation given by the Seller is an invitation to the Buyer to make an offer only within the period stipulated or (if there is none) 30 days and no order placed by the Buyer shall be

deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

- 2.5 Where the Buyer comprises two or more persons, the liability of such persons under the Contract is joint and several.

3 Prices

- 3.1 Unless otherwise agreed by the Seller in writing, the Price for the Goods shall be the price set out in the Seller's price list published on the date of receipt of order, provided always that if the Goods are scheduled for delivery more than 90 days after receipt of the order the Price for the Goods shall be the price set out in the Seller's price list published on the date of delivery or deemed delivery.
- 3.2 Unless otherwise stated or agreed in writing all Prices are "ex-works" and exclusive of all applicable Value Added Tax or any other tax, duty tariff or charge arising in the United Kingdom or elsewhere.
- 3.3 Additional charges may be made for any additions, alterations or tests required by the Buyer.
- 3.4 Packaging materials will be subject to additional charges but will be credited in full if returned in good condition, carriage paid to the Seller within 14 days of receipt by the Seller. Export cases are not returnable.

4 Delivery

- 4.1 When the Goods are ready for delivery the Seller will give the Buyer notice of readiness for collection. It is a Condition of this Contract that the Buyer shall then within 7 days of the date of that notice either;
- 4.1.1 collect the Goods, or
 - 4.1.2 give the Seller instructions for the delivery of such Goods at the Buyer's expense.
- 4.2 If the Buyer fails either to collect the Goods or to give the Seller instructions for delivery of such Goods in accordance with condition 4.1, the Seller may at its discretion;
- 4.2.1 treat the Buyer's failure as a repudiation of the Contract and terminate the Contract with immediate effect; in which case the Seller may;
 - 4.2.1.1 dispose of the Goods as it thinks fit; and
 - 4.2.1.2 retain from any payment made by the Buyer before the termination of the Contract or recover from the Buyer all costs and expenses related to the disposal of the Goods (including, without limitation, the costs of storage and insurance prior to disposal) together with damages for any losses caused by the Buyer's breach; or
 - 4.2.2 arrange for the storage of the Goods in which case the Seller may;
 - 4.2.2.1 arrange for the Goods to be stored at the Buyer's risk; and
 - 4.2.2.2 retain from any payment made by the Buyer or recover from the Buyer all costs and expenses incurred by the Seller in arranging such storage (including, without limitation, the costs of storage and insurance) and a reasonable fee for the Seller's services in arranging for storage of the Goods.

- 4.3 If the seller arranges for the storage of the Goods in accordance with condition 4.2.2, the Seller may at any time give the Buyer notice to collect the Goods and, if the Buyer fails to comply with such notice treat the Buyer's breach as repudiatory in accordance with condition 4.2.1 or continue to store the Goods in accordance with condition 4.2.2.
- 4.4 The Seller will endeavour to have the Goods ready for delivery by the date agreed for delivery but it is agreed that any such dates are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so agreed, delivery shall be within a reasonable time.
- 4.5 Subject to the other provisions of these conditions the Seller 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 Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 4.6 If delivery is delayed by any Force Majeure Circumstances, the following shall apply;
- 4.6.1 The Seller shall as soon as reasonably practicable give the Buyer notice of the reasons for the delay provided that the Seller shall incur no liability by reason of any failure to give notice;
- 4.6.2 The Seller's duty to deliver shall be suspended so long as the Force Majeure Circumstance continues and the time for delivery shall be extended by an equivalent period;
- 4.6.3 The Seller may at any time, and at its sole discretion, give notice to the Buyer to terminate the Contract. In that case the Seller shall incur no liability to the Buyer for any losses caused as a result of the termination.
- 4.7 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 4 shall remain in effect.

5 Title and Risk

- 5.1 Risk in the Goods shall pass to the Buyer:
- 5.1.1 in the event that the Goods are collected by the Buyer, at the time of collection;
- 5.1.2 in the event that the Seller gives the Buyer instructions for the delivery of such Goods, at the time the Goods leave the Seller's premises; and
- 5.1.3 in the event that the Buyer fails either to collect the Goods or to give the Seller instructions for delivery of such Goods in accordance with condition 4.1, 7 days after the date of the notice from the Seller confirming that the Goods are ready.
- 5.2 Property in Goods delivered shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 5.2.1 the Goods; and
- 5.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- 5.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
 - 5.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 5.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 5.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 5.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 5.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 5.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 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
 - 5.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 5.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 5.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 5.7 The Buyer grants the Seller, 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.

- 5.8 Where the Seller 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 the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 5.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

6 Quantities

- 6.1 The Seller is entitled to deliver Goods by instalments of any size and in any order.
- 6.2 If the Seller delivers more or less than the agreed quantity of Goods the following provisions shall apply.
- 6.3 The Seller shall have no liability to the Buyer in respect of the excess or shortfall unless the Buyer gives the Seller notice of the excess or shortfall within 10 days of delivery. If the Buyer does give such notice;
- 6.3.1 In the case of excess deliveries the Seller will make arrangements for the excess to be returned to the Seller at the Seller's expense;
- 6.3.2 In the case of short delivery the Seller may at its own discretion either;
- 6.3.2.1 make good the shortfall by one or more further deliveries; or
- 6.3.2.2 reduce the price by the same proportion as the shortage bears to the Contract quantity.
- 6.4 The Buyer shall not be entitled to reject any delivery on the ground of any excess or short delivery.
- 6.5 Save as provided in the conditions 6.1 to 6.4 above, the Seller shall not be liable for any losses caused by excess or short delivery.

7 Payment

- 7.1 Payment for Goods delivered is due not later than 60 days following the last day of the month in which the Goods are delivered. The Seller reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.2 Except where the Seller reduces the price in accordance with clause 6.3.2 or 8.3.2, the Buyer will pay the full invoice price for Goods delivered without any deduction or set off on the grounds of any alleged shortfall in delivery, defect in quality or failure to conform to specification, or other breach of Contract by the Seller.

8 Warranties

- 8.1 The Seller warrants that on delivery the Goods shall:
- 8.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 8.1.2 conform to the Contract specification and with any sample referred to in the specification.
- 8.2 The Seller shall have no liability for any breach of the warranties in condition 8.1 unless:

- 8.2.1 the Buyer gives written notice of the defect to the Seller within 7 days of the Goods being delivered; and
- 8.2.2 the Seller or the Seller's representative is given a reasonable opportunity after receiving the notice of to visit the Buyer's premises and examine such Goods.
- 8.3 The Seller shall not be liable for a breach of any of the warranties in condition 8.1 if:
 - 8.3.1 the Buyer makes any further use of such Goods after giving such notice in accordance with clause 8.2; or
 - 8.3.2 the defect arises because the Buyer failed to follow the Seller'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
 - 8.3.3 the Buyer alters or repairs such Goods without the written consent of the Seller.
- 8.4 Subject to condition 8.2 and condition 8.3, if any of the Goods do not conform with any of the warranties in condition 8.1 the Seller 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 rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 8.5 If the Seller complies with condition 8.4 it shall have no further liability for a breach of any of the warranties in condition 8.1 in respect of such Goods.
- 8.6 The Seller does not warrant that the Goods are fit for any particular purpose of the Buyer.
- 8.7 The Seller shall not be liable for any economic loss suffered by the Buyer as a result of the failure of any Goods to conform to the contract specification, including loss of profit, business, goodwill or any consequential losses.
- 8.8 Same as provided in this condition 8, the Seller shall have no liability for any defect in the quality of the Goods or their failure to correspond to any description or sample or to be fit for any purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law are excluded.
- 8.9 Nothing in these conditions excludes or limits the liability of the Seller:
 - 8.9.1 for death or personal injury caused by the Seller's negligence; or
 - 8.9.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - 8.9.3 for fraud or fraudulent misrepresentation.

9 Intellectual Property

- 9.1 If it is alleged that the Goods infringe any Intellectual Property Right of any third party the Buyer shall:
 - 9.1.1 promptly notify the Seller of the alleged infringement;
 - 9.1.2 allow the Seller to defend such third party claim as it thinks fit and allow the Seller to have control, at the Seller's expense, of any litigation and/or negotiations relating thereto; and

9.1.3 shall not without the Seller's consent to make any admission of liability in relation to such third party claim.

9.2 The Buyer will not without the Seller's permission resell any Goods supplied under this Contract from which any label or logo has been removed or altered.

10 Lien

Without prejudice to any other remedies which the Seller may have the Seller has a general lien in respect of all debts due and payable by the Buyer on all Goods and property belonging to the Buyer in its possession and shall be entitled, upon the expiration of 14 days notice prior to the Buyer to dispose of such Goods or property as it think fit and to apply any proceeds of sale thereof towards the payment of such debt.

11 General

11.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

11.2 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.

11.3 Failure or delay by the Seller 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.

11.4 Any waiver by the Seller 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.

12 Law and Jurisdiction

12.1 The formation, construction and performance of this Contract shall be governed in all respects by English Law

12.2 It is agreed that the English Courts shall have the sole jurisdiction to decide any dispute arising out of or in connection with formation, construction or performance of this contract.

By processing payment on your transaction you are confirming acceptance of these Terms and Conditions on behalf of the Buyer: