

Arnold (Hose) Ltd Terms & Conditions for the Sale of Goods

1. **Interpretation**
 - 1.1 In these Terms:-
"Buyer" means the person whose Written order to the Goods is accepted by the Seller;
"Goods" means the goods which the Seller is to supply in accordance with these Terms;
"Seller" means Arnold (Hose) Limited (registered in England under number 2531789);
"Contract" means any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Terms;
"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
"Writing" and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.
 - 1.2 Any reference in these Terms to statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
 - 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
2. **Basis of the Sale**
 - 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Buyer's Written order, subject to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such order is made or purported to be made, by the Buyer.
 - 2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
 - 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract 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, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
 - 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
 - 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
3. **Orders and specifications**
 - 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
 - 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
 - 3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Buyer's order.
 - 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
 - 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
 - 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
4. **Price of the goods**
 - 4.1 The price of the Goods shall be the Seller's quoted price and any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided that the Seller has not previously withdrawn it.
 - 4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
 - 4.3 Except as otherwise stated in the Seller's Written quotation and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
 - 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
 - 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.
5. **Terms of payment**
 - 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
 - 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract, Receipts for payment will be issued only on request.
 - 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:-
 - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3 claim interest (both before and after any judgment) on the amount unpaid under the Late Payment of Commercial Debts (Interest) Act 1998.
 - 5.4 If the Buyer fails to make payment on the due date then, without prejudice to the provisions of clause 5.3 above, the Buyer shall indemnify the Company against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Company in recovering sums due in each case without prejudice to any other rights or remedies available to the Company.
6. **Delivery**
 - 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
 - 6.2 The Seller reserves the right to make delivery of the Goods in instalments and where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and the Seller shall be entitled to render a separate invoice in respect of each such instalment.
 - 6.3 If the Seller exercises its right to make a delivery of the Goods in instalments in accordance with clause 6.3 then any failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated or to withhold payment in respect of any instalment of the Goods which have previously been delivered.
 - 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
 - 6.5 If the Buyer fails to take delivery of the Goods (or any such instalment) or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:-
 - 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
7. **Risk and property**
 - 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
 - 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
 - 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
 - 7.3 Until such time as the property in the Goods passes to the Buyer, the Seller shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
 - 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
 - 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
8. **Warranties**
 - 8.1 Subject to the following provisions, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.
 - 8.2 The above warranty is given by the Seller subject to the following conditions:-
 - 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (where oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;
 - 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
 - 8.3 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
 - 8.4 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.
 - 8.5 If the Seller complies with clause 8.4 it shall have no further liability for a breach of clause 8.1 in respect of such Goods.
9. **Limitation of Liability**
 - 9.1 The following clauses set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:-
 - 9.1.1 any breach of these Terms;
 - 9.1.2 any use made or resale by the Buyer of any of the of any of the Goods, or of any product incorporating any of the Goods; and
 - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
 - 9.2 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or 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.
 - 9.3 Nothing in these conditions excludes or limits the liability of the Seller:-
 - 9.3.1 for death or personal injury caused by the Seller's negligence, or
 - 9.3.2 under section 2(3) of the Consumer Protection Act 1987; or
 - 9.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - 9.3.4 for fraud or fraudulent representation.
 - 9.4 Subject to clause 9.2 and 9.3:-
 - 9.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 9.4.2 the Seller shall not be liable to the Buyer for any pure economic, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct or indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.
 - 9.5 The Seller will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-
 - 9.5.1 Act of God, explosion, flood, tempest, fire or accident;
 - 9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 9.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 9.5.4 import or export regulations or embargoes;
 - 9.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 9.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 9.5.7 power failure or breakdown in machinery.
10. **Insolvency of Buyer**
 - 10.1 This clause 10 applies if:-
 - 10.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
 - 10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
11. **General**
 - 11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
 - 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
 - 11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
 - 11.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.