

WITZENMANN UK LTD
TERMS AND CONDITIONS OF SALE

1. In these terms and conditions the person, firm or company selling is referred to as "the Seller" and the person, firm or company placing the order or accepting the quotation as "the Buyer".
2. A binding contract ("the Contract") shall be deemed to have been effected only when any order constituting acceptance by the Buyer of any quotation made by the Seller has been confirmed by the Seller in writing, or when any order made by the Buyer has been accepted and confirmed by the Seller in writing.
3. The acceptance of any quotation by the Buyer includes the acceptance by the Buyer of these terms and conditions and the acceptance by the Seller of any order placed by the Buyer is subject to these terms and conditions. No variation of these terms and conditions shall be valid unless made in writing and signed by the Seller. For the avoidance of doubt, these terms and conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation may be accepted by the Buyer or order placed by the Buyer. However, in the event of a conflict between these terms and conditions and any special conditions contained in the Seller's quotation, or in the Buyer's order (if accepted by the Seller), or any plans and other documents incorporated by any of the foregoing, the following order of preference shall have effect:
 - (a) the special conditions;
 - (b) any plans or documents incorporated by the Seller's quotation or the Buyer's order (if accepted by the Seller) (except these terms and conditions); and
 - (c) these terms and conditions.
4. Any quotation is valid only for the quantity of such goods, accessories and work as are specified therein.
5. The acceptance of any quotation must be accompanied by sufficient information to enable the Seller to proceed with the order forthwith. Contracts and orders are accepted subject to the Seller receiving any necessary license to purchase or to use the required raw materials and to the Seller being able to obtain such raw materials. Contracts and orders are accepted subject to the provisions of paragraph 6 of these terms and conditions.
6. Any quotation is based on market price and rates current at the date of quotation. The Seller reserves the right to amend, without prior notice, the quoted price and rates to meet any variation in costs between the date of quotation and the date of delivery of the work or goods.
7. There is a minimum order charge of £50.
8. Any samples submitted must be paid for unless agreed.
9. The products of the Seller supplied under the Contract ("the Products") are guaranteed against defective workmanship and materials for a period of six months from the date of delivery to the Buyer. The Seller further guarantees that for the same period of six months the Products will perform as set forth in the Seller's specification. Liability under these guarantees is limited to the free replacement of the Products, or the defective parts thereof and does not include the cost of removal, carriage, installation or authorised repairs. The guarantees contained in the paragraph are subject to the following conditions:-
 - (a) the Products must have been properly installed and operated and not have been affected by any mechanical, chemical, electrolytic or other damage or any mishandling, abuse or improper maintenance by or on the part of the Buyer or the employees, agents, representatives or sub-contractors of the Buyer;
 - (b) the Seller shall have no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer; and
 - (c) the Seller shall have no liability in respect of parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any guarantee given by the manufacturer to the Seller.
10. Save as expressly provided in these terms and conditions, and except where the Products 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 or otherwise are excluded to the fullest extent permitted by law.
11. Nothing in these terms and conditions shall affect any liability which the Seller may incur for death of personal injury resulting from its negligence.
12. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any breach of any implied warranty, condition, or any other term, or of any duty at common law or under the express terms of the Contract for any consequential loss or damage) whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents of otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Buyer, except as expressly provided in these terms and conditions.
13. All descriptions, specifications, dimensions and illustrations contained in the Seller's catalogue, price list or other advertising matter are intended merely to present the general idea of the goods or products described therein and *none* of these shall form part of the Contract.
14. Risk of damage to or loss of the Products shall pass to the Buyer:-
 - (a) in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are available for collection, or
 - (b) in the case of Products 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 Products, at the time when the Seller has tendered delivery of the Products.
15. Where delivery is made otherwise than at the Seller's premises:-
 - (a) the Seller will supply an Advice of Delivery Note;
 - (b) the Seller shall not be liable for any damage or shortage in transit unless it shall have received written notice thereof within three days of delivery; and
 - (c) the Seller shall not be liable for non-delivery unless written notice thereof is received within 7 days from the date of dispatch of the Products:
16. Any delivery date or any time period given for dispatch shall be an estimate only. Any time period shall be reckoned from the time when the Seller shall have received the written order to proceed and all information and instructions necessary for the execution of the work. The Seller does not guarantee that the Products shall be delivered by such date or within such time period and shall not be liable for any failures to meet such date or time period. Carriage, packaging, and containers are charged in full on all orders.
17.
 - (a) In the event of the suspension of the work on the instructions of the Buyer or lack of them the Contract price shall be increased to cover any further costs and expenses incurred by the Seller as a direct or indirect result of such suspension.
 - (b) In the event of the Buyer cancelling the order placed with the Seller the Buyer is liable to cancellation charges.
18.
 - (a) All invoices are net and are payable within 30 days of the invoice date.
 - (b) The Buyer shall not be entitled to withhold payment of any amount properly payable under the Contract to the Seller on account of any disputed claim by the Buyer in respect of other faulty goods or products of the Seller or any alleged breach of the Contract, or any other contract between the Seller and the Buyer. The Buyer shall not be entitled to set off or otherwise deduct from any amount properly payable to the Seller any monies which are allegedly due from the Seller to the Buyer.
 - (c) Interest at the rate of 5% per annum above the base rate from time to time of The Royal Bank of Scotland plc is chargeable on all monies due and payable by the Buyer to the Seller after the time period for payment thereof as herein specified shall have passed.
19. If the Buyer shall make default in or commit a breach of the Contract or of any other of the Buyer's obligations to the Seller howsoever arising, or if any diligence, distress or execution shall be levied upon the property or assets of the Buyer and, in the case of a diligence upon the dependence of an action, not be paid out within 7 days of the same being done, or if the buyer shall make or offer to make any arrangement or composition with creditors or if any petition for an appointment of a trustee in sequestration is made or granted in relation to the Buyer, or (if the Buyer is a Company) any resolution or petition to wind up such Company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver or administrator of such Company's undertaking, property or assets or any part thereof shall be appointed, or if anything analogous to any of the foregoing under the law of any other jurisdiction occurs in relation to the Buyer, the Seller shall have the right forthwith to determine any contract (including the Contract) then subsisting between the Seller and Buyer and upon written notice of such determination being posted to the Buyer's last known address any subsisting contract (including the Contract) shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise.
20. The Buyer shall indemnify the Seller against all losses, damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any intellectual property rights including, without limitation, letters patent, registered designs, trademarks or copyright.
21. The Buyer shall provide a letter of credit, bill of exchange or other such security in respect of payment as may reasonably be required by the Seller.
22. Any dispute or difference arising out of the Contract shall be referred to arbitration by an independent expert to be agreed between the Seller and the Buyer, and in the event of failure of the parties to agree, to an independent expert to be appointed, on the application of either party, by the President or Vice-President for the time being of the Law Society of Scotland. The expert shall act as expert and not as arbiter and his decision shall be final and binding on the parties. The provisions of Section 3 of the Administration of Justice (Scotland) Act 1972 are expressly excluded.
23. Title and property in the Products shall pass to the Buyer only when the Buyer has paid the Seller the full amount outstanding in respect of the Products or when the Seller serves Written notice upon the Buyer specifying that title and property in the Products has passed whichever shall be the earlier in time and the Buyer shall permit any officer, employee, representative or agent of the Seller to enter on to the Buyer's premises and to repossess the Products at any time prior thereto.
24. If events beyond the reasonable control of the Seller (including without limitation to the generality of the foregoing words, strikes, lockouts, trade disputes, shortage or raw materials, Governmental action, flood, lightning or fire) prevent or hinder the manufacture, delivery or acceptance of the Products, delivery may be suspended and the Seller shall immediately give notice thereof to the Buyer. Suspension of delivery shall continue so long as manufacture, delivery or acceptance of the Products is so prevented or hindered and the original time for delivery shall be extended by the period of any such suspension. The Seller shall not be liable for any loss caused to the Buyer by reason of such suspension.
25. The Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of the group of companies of which it forms part, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
26. Any notices to be given by either party hereunder may be given by delivery, or by sending the same by recorded delivery post addressed to the other party's last known address, or by telex or facsimile transmission to the other party's last known telex or facsimile number. A notice shall be deemed to have been received, in the case of delivery, at the time of delivery, in the case of recorded delivery post, upon the expiry of 48 hours from the time the same was properly addressed, stamped and posted and in the case of telex or facsimile transmission, upon transmission.
27. The Contract shall in all respects be governed by and construed in accordance with the law of Scotland and the Seller and the Buyer, insofar as not already subject thereto, prorate by virtue of their acceptance of these terms and conditions, the non-exclusive jurisdiction of the Court of Session and the Sheriff Court of South Strathclyde, Dumfries and Galloway at Hamilton.