

A & J WELDING SUPPLIES LIMITED

TERMS AND CONDITIONS OF BUSINESS

All goods, and installation services sold and supplied by A & J Welding Supplies Limited [Company Number: 03097355] ("The Company"); to the customer ("The Customer") are sold subject to the following terms and conditions of sale and services ("these Conditions").

ACCEPTANCE BY THE CUSTOMER

1. If the Customer places an order or gives any delivery instructions for goods and services or accepts their delivery (in whole or in part) this shall be deemed to be acceptance by the Customer of these Conditions.

CONFLICTING CONDITIONS

2. Any conditions stated in the Customer's order or other document which conflict with these Conditions, and in particular any conditions stating that the Customer's terms of purchase shall prevail over these Conditions, shall not take effect unless agreed in writing by a director of the Company.

FUTURE CONTRACTS

3. If subsequent to any contract of business that is subject to these Conditions a further contract of business is made with the same Customer without reference to any conditions of business, such contract howsoever made shall be deemed to be subject to these conditions.

RISK AND TITLE

4. Risk in the goods shall pass to the Customer upon delivery. Where the Company undertakes delivery of the goods to the Customer's agents, delivery is when the goods are off-loaded from the Company's vehicle (or that of its agent) at the delivery address stipulated by the Customer. Where the Customer collects the goods from the Company's premises, delivery is when the goods have been loaded on to the Customer's vehicle (or that of the Customer's agent). Where the Company despatches the goods by mail or courier, delivery is when the Customer signs for receipt of the goods.
5. Notwithstanding delivery of the goods and passing of risk, property in the goods shall remain with the Company until the Customer has paid in full for the goods and has paid in full any other amounts due to the Company by the Customer including specifically services.
6. Until the above conditions have been complied with, the Customer shall be the bailee of the goods and shall store the goods safely and securely and separately from other goods held by the Customer and in a manner that makes them readily identifiable as the goods of the Company. The Customer will insure the goods for their full value with a reputable insurer, and upon request of the Company will request the said insurer to note the Company's interest in the goods upon the Policy. The Customer shall hold the proceeds of any claim on the said insurers in respect of the goods on trust for the Company and shall account to the Company thereafter.
7. The Company's consent to the Customer's possession of the goods, and any right the Customer may have to the possession of the goods shall cease at whichever is the earliest of the following events:
 - a. If any sum (whether in respect of goods, services or otherwise) is not paid to the Company by or on behalf of the Customer by the date upon which it falls due for payment.
 - b. If the Customer, being a company shall convene a meeting of its creditors or a petition is presented for administration order or a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) the creditors of the Customer or the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a trustee receiver or administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or a petition is presented or a meeting is convened for the purpose of considering a resolution (or other steps are taken) for the winding up of the Customer otherwise than for the purpose of an amalgamation or reconstruction where such amalgamation or reconstruction has the prior written approval of the Company.
 - c. If the Customer, not being a company, does or fails to do anything which would entitle any person to present a petition for bankruptcy order, or proposes a voluntary arrangement with creditors under the Insolvency Act 1986.
8. The Company may for the purpose of inspecting or recovering its goods enter upon any premises where they are stored or where it reasonably believes them to be stored or installed, a licence for which is hereby granted by the Customer.
9. Prior to payment in full the Customer may resell the goods in the normal course of its business provided the proceeds of such sale are held on trust by the Customer on behalf of the Company, are not mingled with other funds held by the Customer and are not paid into an overdrawn bank account.
10. Nothing in this clause shall confer any right upon the Customer to return the goods, and the Customer must still comply with the following conditions regarding payment notwithstanding that title has remained with the Company.

DELIVERY

11. Any dates or times quoted for delivery are estimates only and, which the Company will make every effort to meet the dates or times, time or date of delivery shall not be the essence of any order and the Company shall not be liable for any loss as a result of failure to deliver when quoted.
12. On receipt of goods the Customer must inspect the goods and must evidence by signing the appropriate copy despatch documentation of the Company or its agent that must be returned forthwith to the Company or its authorised carrier and shall represent absolute proof to delivery to the Customer.
13. The goods shall be deemed to have been delivered in accordance with the despatch documentation in good order and condition and without shortage to the Customer's satisfaction unless the Company receives written notice to the contrary as follows:
 - a. At the time of delivery in the case of any defect or damage to the goods and within 7 days of delivery in the case of shortages or other discrepancies which would have been apparent on reasonable inspection by the Customer.
 - b. Within 10 days of date of despatch as stated on the Company's invoice for goods in the case of non-delivery.
14. In the event of the Company not receiving such written notice no claims for goods damaged on delivery or shortages or other discrepancies will be entertained.
15. The Company's liability in the event of damage in transit is limited to the repair or the replacement of the goods at the Company's option. Damaged goods must be retained for inspection by the carriers, following which they must be returned carriage paid to the Company.
16. The Company shall be entitled to make deliveries by instalments, and each instalment shall be treated as a separate contract to which these Conditions shall apply.
17. Where the Customer is to collect the goods from the Company, or where the Customer requires the Company to make a booking at the Customers premises for the delivery of the goods and the Company agrees to deliver only as requested by the Customer, if the Customer does not take delivery within 14 days of being notified by the Company that they are ready for despatch the Company may invoice the goods as if they had been delivered and payment terms set out in these Conditions shall apply.
18. The Company reserves the right to charge the Customer for storage where the Customer fails to take delivery of the goods after the due date for delivery.

RETURNS

19. Goods returned to the Company for credit or exchange will be accepted only if the following conditions are complied with:
 - a. The Company's current returns policy as notified to the Customer is complied with;
 - b. Written authority for return has been obtained from the Company, and the terms of such return (e.g. regarding payment of carriage) have been complied with.

PALLETS

20. Where the goods are delivered on pallet, the pallets remain the property of the Company. The pallets (or their equivalent) must be made available for collection by the Company at the time of the second subsequent delivery to the Customer (or if shorter, after 60 days). The Company may invoice the Customer for all lost or damaged pallets at their current replacement cost.

PRICES

21. The Company reserves the right to adjust the price at any time prior to delivery of the goods to reflect increased costs, errors or omissions or for any other reason.

22. Price will be those ruling at the time of despatch provided that the Customer accepts delivery within 14 days of acceptance of the order the prices shall instead be those ruling at the date of acceptance of the order.
23. All prices are exclusive of Value Added Tax.
24. All prices are inclusive of carriage unless otherwise stated, except where the Customer requests special delivery arrangements in which event the Company reserves the right to adjust the price to reflect the increased cost of delivery. Whilst there is no minimum order requirement: all prices are based on orders for the minimum value agreed between the Company and the Customer. The Company will charge for carriage for any order received for less than the agreed minimum order value and will invoice the Customer accordingly.
25. If extra work or expense is incurred due to (or due to the lack of) the Customer's instructions the Company may increase the price to recover such extra costs.
26. Unless otherwise agreed in writing the Company, terms of payment are net cash by the last day of the month following the month of delivery (the "Due Date"). Time of payment is of the essence of the contract for the supply of goods and services. In the event of payment not being received within seven days of the Due Date, then without prejudice to its other rights and remedies the Company shall be entitled to:
 - a. Charge interest on the amount due at 2.5% per annum above National Westminster Bank plc base rate from the Due Date until date payment is received by the Company;
 - b. Require immediate payment of all other amounts due to the Company, whether or not the Due Date for such other amount has been reached;
 - c. Suspend or cancel by written notice to the Customer, any or all deliveries of goods ordered by the Customer without liability to the Company.
 - d. Payment for installation services and otherwise shall be as provided in this condition.
27. In the event that legal or other action has been taken to recover payment the Company will add all costs incurred to the invoice total.
28. Settlement discount may be taken only if previously agreed in writing by the Company. In the absence of any agreement to the contrary settlement discount is not offered by the Company and all prices are net.

DESCRIPTION OF GOODS

29. The company makes every effort to ensure that all goods sold comply in all material respects with any sales literature published by it, but reserves the right to make reasonable modifications to the design and/or specifications of the goods without notice and without liability to incorporate such modifications in goods previously or subsequently sold.
30. Descriptions and illustrations contained in the Company's sales literature do not form a part of the contract and are approximate only.

WARRANTY AND LIABILITY

31. The Company will repair or replace at its option goods agreed by it to be faulty due to manufacturing defect or defective materials in accordance with its current warranty policy as notified to the Customer. Faulty goods must be taken to an Authorised agent and not returned to the Company.
32. The Company shall be under no liability in respect of goods:
 - a. Which have been delivered to the Customer more than two years prior to the notification of any defect;
 - b. Which have been paid for in full.
33. Other than as above no representation or warranty is made as to condition, quality, fitness or purpose, performance or otherwise of goods whether express or implied by statute, trade custom or otherwise.
34. The Company shall be under no liability whatsoever, whether in contract, in tort in misrepresentation or otherwise, for consequential loss or other damage of any description in respect of any goods sold or repaired or services rendered (except for death or personal injury caused by negligence).
35. The application and use of goods is the absolute responsibility of the Customer. Any technical and/or other advice or information provided by the Company by any means is given without warranty, and the Customer shall be deemed to have carried out its own tests in respect of suitability of the goods for the intended purposes and applications.
36. No warranty is given by the Company that the goods do not infringe any patent trademark or registered design.

TRADEMARKS

37. The Customer is hereby authorised for the duration of the contract to which these Conditions apply to use all trademarks or trade names which are now or may hereafter be used by the Company in connection with the goods ("Trademarks") subject to the following:
 - a. The Customer shall use the Trademarks only on or in relation to the goods supplied by the Company and shall not use them on or in relation to any goods which may have been altered in any way by the Customer or any other person;
 - b. The Customer agrees to permit the Company to inspect prior to publication all promotional and other material upon which the Customer proposes to use any Trademarks, and shall not proceed with the use of such material unless and until the Company's written approval shall have been obtained, such approval to be granted or withheld at the sole discretion of the Company;
 - c. The Customer undertakes not (either before or after termination of the contract to which these conditions apply) to use any word, name, title, expression, or device identical to or in the sole judgement of the Company confusingly similar to the Trademarks in connection with any goods not purchased from the Company or as part of its corporate or business name or in relation to any business in which the Customer is or shall be engaged.
 - d. The goods are sold on the condition that when resold they are sold under the Company's trademarks with the same specifications as when supplied by the Company.

CANCELLATION AND DEFAULT

38. In the event that the Customer's right to the possession of the goods shall cease or the Customer fails to comply with any of these Conditions, including failure to pay amounts due to the Company by the Due Date then the Company shall be at liberty without prejudice to its other rights and remedies and without any liability whatsoever, to cancel all orders and contracts or any part thereof remaining unfulfilled for the delivery of goods and services.

FORCE MAJEURE

39. The Company shall be under no liability whatsoever for non-performance in whole or in part of its obligation under the contract due to causes beyond its control or due to its suppliers including but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts of the Customer or a third party, failure or delay of transportation, machinery breakdown, acts of any Government or agency or sub-division thereof, Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other act of God. In any such event, the Company may, without liability, cancel or vary terms of the contract including, but not limited to the time lost by reason of such causes.

RIGHT TO ALTER THESE CONDITIONS

40. The Company reserves the right to alter or amend conditions at any time by notice in writing to the Customer.

ASSIGNMENT

41. The Customer shall not assign or transfer, or purport to assign or transfer to any other person the contract or the benefit thereof, or any condition, warranty or other term or condition thereof.

WAIVER

42. Failure to exercise or delay in exercising any right hereunder shall not operate as a waiver thereof and exercise of any right shall not preclude any other exercise thereof or the exercise of any other right.

CUMULATIVE RIGHTS

43. The rights set out in these Conditions are in addition to all other rights available under general law.

GOVERNING LAW

44. These Conditions, and the construction validity and performance of any contract to which they apply shall be governed by English law and shall be subject to the Jurisdiction of the English Courts.