



TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

1. Interpretation

In these conditions the words 'the Company' mean Schwank Ltd, the words 'the Customer' or 'the Purchaser' mean the person, firm or Company to whom a quotation or tender is addressed or with whom an agreement is made for the supply of goods or service.

2. Application

These conditions govern all orders and contracts entered into by the Company for the supply of goods or services by the Company and in the event of conflict these conditions override any other terms and conditions stipulated, incorporated or referred to by the customer or purchaser. No alteration or modification of these conditions shall have effect unless such alterations or modifications are, accepted in writing by a duly authorised officer of the Company. Acceptance of the supply of service by the Company shall be conclusive evidence before any court or arbitrator that these terms apply. Any quotation given by the Company for the supply of goods or services shall be open for acceptance within 30 days from the date thereof.

3. Price

Unless otherwise agreed in writing, prices applicable to the supply of goods or services by the Company shall be those ruling at the date of delivery or completion and the Company reserves the right to vary its prices without notice. This condition shall not apply to fixed price quotations expressed in writing as such but such fixed price shall specifically exclude any increases in price occasioned by the increase or imposition of any duty or tax or by adjustment or alterations in currency rates of exchange.

4. Payment

- (a) Unless otherwise agreed in writing by the Company, payment for the goods or services shall be made 30 days from the date of the Company's invoice or such earlier date as the Company shall specify. Payment made within 8 days from the date of the Company's invoice shall qualify for a 1½% rebate on the net invoice total.
- (b) Interest shall be payable by the customer on any sum outstanding beyond the period specified above or specified in the contracts at the rate of 4% per annum above base rate of Lloyds TSB Bank plc from time to time in force.
- (c) Where payment is to be made by instalments the failure of the customer to pay any instalments in due time shall render the whole of the balance then outstanding due and payable and shall entitle the company to treat such failure as a repudiation of the contract by the customer and (without prejudice to any other right) to recover the damages.
- (d) Whenever the Company makes part delivery or part supply of goods or services pursuant to any contract it shall be entitled to render monthly invoices for a sum not exceeding the total value of all goods or services supplied and such invoices shall be payable by the customer in accordance with the provisions herein before stated.
- (e) The Company shall have a general lien upon any goods of the customer in its possession for any sum for the time being due to the Company.

5. Suspension or Termination of Contract

- (a) If the customer shall in the reasonable opinion of the Company be unable or be likely to be unable to pay any sums he owes to the Company then (without prejudice to any other rights), the Company shall be entitled to demand security prior to delivery or the carrying out of any services either by payment in cash or by bank guarantee notwithstanding any terms of payment previously agreed and in the event that the Customer is unable to provide security the Customer shall be deemed to have repudiated the contract and the Company shall be entitled to delay delivery of the goods indefinitely or refuse to commence or complete any services or accept the repudiation of the contract without liability.
- (b) If the customer commits any breach of these conditions or of the Contract or if any distress or execution be levied or be attempted to be levied upon the customer or his property or if the customer shall make or offer to make any arrangements with creditors or, commit any act of bankruptcy or if any petition receiving order in bankruptcy be presented or made against him or if a receiver be appointed over all or any of the assets of the customer or, if a winding up order be made against the customer or, if the customer goes into liquidation (otherwise than for the purpose of reconstruction or amalgamation) the Company shall without prejudice to any other rights or remedies it may have and without any liability have the right immediately by notice in writing to:-

suspend or terminate any contract or any unfilled part thereof and:
stop delivery of any goods and:
call for immediate payment of all monies owing to the Company.

6. Property and Risk

- (a) The purchaser acknowledges that before entering into an agreement for the purchase of any goods from the Company he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy or, being a Company with limited or unlimited liability knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver to petition for a winding up of the Company or exercise any other rights over or against the Company's assets.
- (b) Goods the subject of any agreement by the Company to sell shall be at the risk of the purchaser as soon as they are delivered by the company to his vehicles or his premises or otherwise to his order.
- (c) Such goods shall remain the sole and absolute property of the company as legal and equitable owner until such time as the purchaser shall have paid to the Company the agreed price.
- (d) Together with the full price of any other goods the subject of any other contract with the Company.
- (e) The purchaser acknowledges that he is in possession of goods solely as bailee for the Company until such time as the full price thereof is paid to the Company.
- (f) Together with the full price of any other goods the subject of any other contract with the Company.

- (g) Until such times as the purchaser becomes the owner of the goods he will store them on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Company.
- (h) The purchaser's right to possession of the goods shall cease if he not being a Company commits an available act of bankruptcy or if he being a Company does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up. The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- (i) Subject to the terms hereof the purchaser is licensed by the company to process the said goods in such fashion as he may wish and/or incorporate them in, or with any other product or products subject to express condition that the new product, products or any other chattel whatsoever containing any part of said goods shall be separately stored and marked so as to be identifiable as being made from or with the goods the property of the company.
- (j) If goods the property of the company are admixed with goods the property of the purchaser or processed with, or incorporated therein the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the company. If the goods the property of the company are admixed with goods the property of any person other than the purchaser or are processed with or incorporated therein the product thereof shall become or shall be deemed to be owned in common with that other person.
- (k) The purchaser shall be at liberty to agree to sell on any product produced from or with the company's goods on the express condition that such an agreement to sell shall take place as agents and bailees for the company whether the intending buyer sells on his own account or not and that the entire proceeds thereof are held in trust for the company and are not mingled with any other monies and shall at all times be identifiable as the company's monies.

7. Delivery or Completion

- (a) The Company accept no responsibility for any loss due to delays in delivery or in completion of work due to delays or accidents in transit or by reason of disputes with workmen, combinations of workmen, restrictions of work by workmen or by strikes, lockouts, accident to work or machinery, war, rebellion, civil commotion, fire, explosion, act of God or any other cause whatsoever beyond the control of the Company
- (b) All delivery dates or periods given by the company whether before or after acceptance of the order are given in good faith but are approximate only and the date stated shall not take effect until all necessary information has been received by the Company.
- (c) Should despatch or delivery of the goods or part of them be delayed or prevented from any cause whatsoever beyond the Company's control or for a reason attributable to the customer or to its customers or agents, then at the Company's option either the contract or any unfulfilled part thereof shall be terminated or the Company may extend the time for delivery until a reasonable period after such cause shall have ceased in which case the customer shall be responsible for all storage and other costs incurred by the Company in connection therewith. Any termination shall not prejudice the rights and obligations of either party in respect of any part of the contract already completed.
- (d) Unless otherwise agreed delivery shall take place at the works of the customer or at a site nominated by the customer with a good firm access for motor vehicles and mobile plant from the highway to the site without limitation of head-room or side restriction. The customer shall be responsible for providing labour and facilities at the delivery point for the unloading of goods ordered by him and shall indemnify the Company against all claims whatever arising from such unloading operation. The Company reserves the right to its drivers and carriers to refuse to take their vehicles on to the nominated site if in the opinion of the driver or carrier the site conditions are such as so constitute a danger to the vehicles, goods or to any person or property.

8. Cancellation

- (a) Orders placed cannot be cancelled except with the company's consent in writing and on terms that will indemnify the company against loss.
- (b) Goods returned without the company's consent will not be accepted for credit. Where goods are returned with the company's consent by prior arrangement in writing all costs of carriage shall be paid by the customer and a minimum charge of 25% of the invoice value of the goods will be made to cover handling and expenses, provided always that it shall be the responsibility of the customer to return the goods to the company in good and saleable condition at the customer's risk.

9. Consequential Loss

The Company shall not be liable for any consequential or special loss of profit, loss or damage to plant or any other expenditure incurred by the customer by reason of any breach of contract by the Company whatsoever save any losses, which cannot lawfully be excluded.

10. Warranty

The Company shall offer a warranty on goods purchased by customer. This will be either:-

- (a) A standard 3 year warranty covering parts and labour should the Company commission and then service once a year for three years the goods within a heating system or
- (b) A One year warranty covering parts and labour should the Company commission but not service the goods within a heating system or
- (c) A One year warranty covering parts only should the company supply only goods to the customer.

11. Law

The contract shall in all respects be construed and operate as an English contract and in conformity with English Law. Both the Company and the customer hereby agree that it is the intention of neither party to violate any public policy, statutory or common law that any sentence, paragraph, clause or combination is in violation of any National or E.E.C. law, the same shall not be of effect but shall be divisible from the remainder which shall remain binding on the parties.