

CONDITIONS OF SALE

1. Effect of Conditions

These conditions of sale shall apply to all contracts made between BROYCE CONTROL LIMITED ("the Company") and any purchaser of the Company's products in the UK ("the Purchaser") unless agreed in writing. The Company is not willing to contract otherwise than on these conditions and any printed or standard conditions which appear or are referred to on any documents emanating from the Purchaser are to have no legal effect whatsoever. These conditions shall also apply mutandis to the supply of repaired or replacement goods by the Company in compliance with any obligation to repair or replace defective goods arising hereunder.

2. Unfair Contract Terms

The Company has drawn up these Conditions of Sale in the light of the Unfair Contract Terms Act 1977 and considers them to be fair and reasonable and its prices are based on contracts made on these conditions. If the Purchaser considers these terms to be unreasonable, he must inform the Company in writing before any contract is made, otherwise he will be deemed to have accepted that the Company's Conditions are fair and reasonable.

3. Formation of Contract

No order shall become binding upon the Company until it has been expressly accepted by the Company in writing.

4. Variation of Contract

No alteration to this contract or any of these conditions shall be binding on the Company unless agreed to in writing.

5. Variation of Prices

The Company reserves the right at any time to alter any of its prices without any notice whatsoever. In respect of goods delivered after any such change of price the price charged shall be the price current at the date of despatch of the goods by the Company.

6. Delivery

(1) Any quotation by the Company of a time for delivery is quoted to the best of the Company's ability but it is not guaranteed, nor deposit form a term of the contract and time for delivery is not of the essence of this contract. The Company will endeavour to comply with any date so quoted but is under no absolute obligation to do so and will not be liable for any failure to meet a delivery date nor for loss or consequential loss of any kind arising from delay in delivery howsoever caused.

(2) So long as any circumstances whatsoever beyond the control of the Company may hinder or delay delivery the Company shall not be liable in any way for its inability to make delivery.

(3) If the Company shall be prevented from performing any of its obligations under the contract by any circumstances whatsoever outside its control including in such circumstances (but not limiting the circumstances thereto) Acts of God, the Queen's enemies, acts of public authorities or government departments, fire, flood, storm and tempest, strikes, lock-outs or industrial disputes, civil or foreign wars, failure or restriction of supplies or transportation then the Company will be released from all obligations to the Purchaser whatsoever and will be in no way liable for any failure to perform the same.

7. Terms for Payment

(1) Invoices will be dated with the date of preparation and will also show the date upon which the goods were despatched. Statements of account will be furnished monthly. The Purchaser is liable to pay for all goods supplied to him by the Company on or before the expiration of thirty days from the date on which such goods or any part or parts thereof are supplied.

(2) If payment is not made on or before the last day of the month in accordance with the provisions hereof the Company shall be entitled to charge interest on the amount due from that date until the date of payment (whether before or after judgment) at a rate equivalent to two percentage points above the Base Lending Rate of Barclays Bank Limited during the period of default.

8. Risk/Passing of Property

(1) Property in the goods sold shall remain in the Company until such a time as ALL monies due from the Purchaser to the Company (upon whatever grounds and howsoever such liability shall have been incurred) have been paid or until the Purchaser resells the goods to a third party in the usual course of the Purchaser's business.

(2) The goods shall be at risk of the Purchaser from the time they are delivered out of the Company's premises to the post office or to the carrier (who shall for this purchase be the agent of the Purchaser authorised to take delivery of the goods) or to the Purchaser or any other authorised agent of his.

(3) Until property therein shall have passed from the Company under the terms hereof:

(i) The Purchaser shall be liable to the Company for any loss or damage thereto howsoever caused and shall insure the goods and all other goods of the Company as shall from time to time be in his possession in the Company's sole name to their full market value.

(ii) The Purchaser shall ensure that at all times after they have been delivered to him or his agent (until such time as they shall be incorporated in other products or resold in the ordinary course of the Purchaser's business) the goods shall be stored or otherwise identified in such a way as to show that they remain the property of the Company.

(iii) The Purchaser may not mortgage charge or otherwise encumber the goods or dispose of them (otherwise than by attaching them to or incorporating them in other products or reselling them in the ordinary course of his business) without the Company's written consent.

9. Company's right to repossess goods

If while the whole or any part of the purchase price of the goods remains unpaid the Purchaser deals with the goods in any manner (other than as permitted in Clause 8 above) adverse to the Company's title or has a receiving order made against him or is made bankrupt or (where the Purchaser is a limited company) enters into liquidation or the goods are seized under any execution or distress or other form of legal process, this contract shall automatically determine (but without prejudice to any pre-existing claim which the Company may have under these conditions against the Purchaser) and the Purchaser shall cease to be in possession of the goods with the Company's consent and the Company shall be entitled to recover possession of the goods, so long as they are still identifiable, forthwith and shall be entitled to enter upon the premises of the Purchaser and remove the goods and shall not be liable for any damage or injury reasonably done to any other property of the Purchaser to which the Company's goods have been attached or in which they have been incorporated during the course of removing the Company's and retaking possession thereof.

10. Guarantee/Warranty

(1) Any goods or parts of goods sold by the Company which are not manufactured by the Company are sold only under such warranty as the manufactures of such goods or parts of goods give to the Company and which the Company is able to assign or transfer to the purchaser or to enforce without legal expense at the Purchaser's request. The Company itself gives no guarantee or warranty in respect of such goods.

(2) If any goods manufactured by the Company are shown to the satisfaction of the Company to be defective by reason either of faulty manufacture or of bad workmanship by the Company within a period of 12 months from the date of manufacture (mis-use or fair wear and tear expected) the Company will repair or replace such goods (at its option) free of charge (other than costs of carriage) and return them to the Purchaser provided that notice of any alleged defect is given by the Purchaser to the Company in writing within seven days of the discovery of the alleged defect and provided that the defective goods are returned to the Company's works carriage paid within fourteen days after such notice has been given to the Company.

11. Exclusion of liability

(1) Clause 10 is intended to provide a fair means of resolving disputes about the quality of goods supplied and expect as provided therein and expect as the law in force for the time being shall otherwise provided the Company shall not be liable for any damage injury or loss of any kind whatsoever (including without limiting the effect of those words any loss of profit or of contracts or any other consequential loss but excluding damages for death or personal injury caused by negligence for which the Company is responsible) to any property or persons howsoever caused arising out of any defect in the goods.

(2) Except as provided for in Clause 10 all warranties and conditions (including any warranties or conditions as to quality or fitness for any particular purpose) whether express or implied by statute, common law or otherwise are excluded and hereby negated.

(3) The Company's liability for any misrepresentation or breach of any warrant collateral to this contract shall be limited to a liability to repair or replace the goods supplied pursuant to the provisions of Clause 10 hereof or to repay the Purchaser the price of the goods provided that the Purchaser shall have first returned the goods to the Company's premises, carriage paid.

(4) In any event the liability of the Company to the Purchaser for any claim arising out of the defect in the goods or otherwise in connection with the use thereof or in connection with the making of the contract shall not exceed the invoiced price of the particular goods in respect whereof complaint is made.

12. Rights of Company in the event of breach of contract by Purchaser

In the event of the Purchaser being in breach of any of these conditions the Company shall be entitled, if it thinks fit, to cancel all current contracts with him and to refuse to supply him any further goods or to suspend delivery until all breaches have been remedied and to refuse to perform or continue to perform any repairs for him and all invoices for goods supplied to the Purchaser up to the date of discovery of the breach and for goods supplied thereafter shall forthwith become due and payable, notwithstanding the terms of Clause 7 hereof, and interest at the rate set out in Clause 7(ii) hereof shall become immediately payable thereon. In such circumstances the Company shall be entitled, without prejudice to its rights to claim damage for the breach of contract, to refuse to allow credit or pay to the Purchaser any allowance whatsoever whether accrued or accruing to which he would otherwise have been entitled.

13. No right of set-off

The Purchaser shall not be entitled to the benefit of any set-off to which he might be otherwise entitled in law or in equity. All sums payable hereunder shall be payable without any deduction and the Company shall be entitled in the event of non-payment to obtain and enforce judgment thereon without any stay of execution pending the determination of any cross-claim by the Purchaser. The reason for this condition is that the Company has incurred expense in the manufacture preparation or acquisition of the goods for sale and it is not reasonable for the Purchaser to be allowed to withhold payment therefore until such time as justice of any cross-claim which he may assert shall have been determined.

14. Carriage

(1) All goods will be dispatched to the Purchaser at the Purchaser's risk.

(2) All goods will be sent by post office services goods or passenger train or by carrier unless the Purchaser gives other instructions.

(3) In respect of orders to the value of £250.00 and above excluding packing and value added tax and single consignments of any scheduled order where the value of such consignment is at least £250.00 exclusive of packing and value added tax and where in each such case the destination of the goods is within the United Kingdom the Company will be responsible for the cost of carriage. In all other cases goods will be dispatched at the Purchaser's expense.

15. Damage in transit or mis delivery

(1) Both the carrier and the Company must be advised in writing (otherwise than upon any of the carrier's documents) within seven days after the receipt of invoice if the goods covered by the invoice have not been delivered in full, or within two days after delivery in the event of damage, pilferage or shortage occurring in the course of carriage.

(2) Provided such notice is given, the Company will use its best endeavors to assist the Purchaser to obtain proof of delivery to the carrier and/or admissions of damage, pilferage or short delivery from the carriers. Should the claim fail, the responsibility for payment for the goods so lost or damaged will rest with the Purchaser since the risk in the goods passes to the Purchaser as soon as the goods are delivered by the Company to the carrier.

16. Right sub-contract

The Company shall be entitled to sub-contract any part of this contract.

17. Governing Law

The contract shall in every respect be governed by English law and the English courts, to whose jurisdiction the Purchaser submits by entering into a court with the Company on these Conditions shall have exclusive jurisdiction in the event of the dispute arising out or in connection with any contract made on these conditions