



1 Definitions

1.1 In these Conditions the following expressions shall have the following meanings:

“Our, Us, We” relates to TEP Products Ltd,
 “You, Your” relates to the person firm or corporation with whom We contract for the sale of the Goods or supply of the services,
 “the Goods” means the products which are to be sold by Us and purchased by You under the Contract, “the Contract” means any contract for the sale of the Goods or Supply of services by Us to You incorporating these Conditions and arising from Our acceptance of Your order.

2 General

2.1 Any quotation or estimate given by Us is an invitation to You to place an order which shall be an offer open to acceptance by Us and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon Us. A binding contract shall only come into effect upon the earliest of any of the following:
 Our placing an order for supply or manufacture with Our suppliers;

despatch of the Goods; or
 despatch of Our written acknowledgement of order.
 These Conditions are the only conditions upon which We transact business and shall be incorporated in the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any order placed by You. Any reference in any document forming part of or evidencing the Contract (including any order design drawing specification or other similar document) to any of Our terms or conditions of purchase or business shall not have the effect of incorporating any such terms or conditions into the Contract.
 These Conditions can only be varied with Our written agreement.

3 Prices

3.1 All prices are exclusive of Value Added Tax which will be charged at the rate applicable at the relevant tax point.
 Prices in any quotations, estimates, acknowledgements of orders or other documents issued prior to despatch of the Goods are not binding upon Us unless the price was stated to be fixed in the Contract and You have complied in all respects with any provisions relating to such fixed price. The price charged shall be the price ruling at the date of despatch of the Goods which We may increase to reflect any increase in the cost to Us which is due to any factor beyond Our control.

We reserve the right to charge for any packaging materials (including pallets) that We consider are necessary for the delivery of the Goods. If any packaging materials which have been charged for are returned to Us by You in good condition, We shall issue a credit note in respect of them. If any packaging materials are returned directly to a supplier, We shall only issue a credit note when and if We receive a credit from that supplier. You shall not deduct sums due in anticipation of such credits.
 Where We agree to take back into stock Goods already delivered to You, We reserve the right to impose a handling charge which You agree is a genuine pre-estimate of Our expenses. This charge shall be up to 15% of the value of the Goods concerned when You deliver them back to Our depot, and up to 25% of the value of the Goods concerned when We arrange collection.

4 Delivery and Passing of Risk

4.1 The Goods shall be delivered to You at the place specified in the Contract or as subsequently agreed between us. If no place for delivery is specified or agreed, delivery shall take place at Our premises immediately prior to loading for despatch to You.
 The Goods are at Your risk from the time they are loaded on to the vehicle for despatch to You whether that vehicle is Ours, Yours or another's.

We are entitled to make delivery of the Goods by instalments and to invoice You for each instalment despatched.
 We are not bound by any delivery date or time put forward by You at any time and any delivery date or time stated by Us at any time whether prior to or during the Contract and whether in writing or otherwise is an estimate only and shall not be binding. Time of delivery shall not be of the essence.

4.2 In order for You to be to a place agreed with You, You must ensure that there is adequate labour and facilities for unloading the Goods safely and promptly and within a reasonable time and that all approach roads and access points are suitable. If you do not do so You must reimburse Us for any charges, costs or expenses We incur as a result.
 If We deliver the Goods to You on Our own or a third party's transport, You must indemnify Us against any additional costs claims or proceedings arising out of any delay caused by lack of suitable access to or egress from the premises, facilities for off-loading, signing off of delivery notes or any other cause whatsoever arising from Your or Our employees' default or negligence.
 Where delivery is affected on a third party's transport We shall not be liable for damage occasioned by any negligent act or omission of that third party, its servants or agents, provided that We have exercised reasonable care in selecting that third party.

5 Inspection

5.1 Where We have delivered or delivered directly You must inspect the Goods immediately upon their arrival at the destination to which they are despatched under the Contract and check:
 whether the Goods have been damaged in transit;
 that the Goods are those and in the quantity specified in Your order or stated on Our delivery note.

Any discrepancy between the Goods delivered and those described in Our Delivery Note or specified in Your order and any damage to the Goods in transit must be notified to Us in writing within three working days of Your receipt of the Goods.
 In the case of non-delivery of the Goods You must notify Us in writing within three working days of Your receipt of Our delivery note or invoice (whichever is the earlier). No claim in respect of non-delivery or damage in transit will be considered by Us unless You comply with the provisions of this Condition.

Where You collect or arrange collection or delivery of the Goods, We shall accept no claims that the Goods are not those and in the quantity specified in Your order or Our delivery note once the Goods have left the premises from where they were collected.
 Without prejudice to the provisions of Condition 10 You will be deemed to have accepted the Goods as being in accordance with the Contract unless You notify Us in writing of any defect in materials or workmanship or failure to comply with designs drawings Specifications or other data supplied by Us or any other party within 14 days of the date of delivery of the Goods which would be apparent upon reasonable inspection and testing of the Goods within 14 days.

6 Cancellation of Orders

6.1 You will only be able to cancel an order (or any part of an order) which We have accepted with Our prior written agreement and providing You indemnify Us for all costs, charges, expenses, damage or loss (including, without limitation, loss of profit) incurred or suffered by Us in respect of each such order. We are not bound to agree to any such cancellation and may complete the Contract even if You claim to cancel the Contract.

You shall not be entitled to cancel the delivery of any Goods or late performance of services unless We have agreed with You in writing that any date was to be binding.

7 Payment, Set-off and Lien

7.1 Payment for the Goods shall be made net cash no later than the last day of the month following the month in which the relevant Goods were delivered.

If You either:
 fail to comply with Your payment obligations; or
 exercise any credit limit We have set up (whether You are aware of it or not);

We may withhold despatch of any part of the Goods remaining to be despatched, suspend manufacture of Goods remaining to be manufactured, suspend Our performance of any other contract between Us or require You to pay for Goods prior to their despatch to You.

If any sum due from You to Us under the Contract or any other contract is not paid on or before the due date for payment, all sums You owe to Us shall become due and payable immediately.

All amounts due from You in payment for the Goods which are not paid on or before their due date for payment shall bear interest both before and after judgement at the rate of 4% per annum above Barclays Bank Plc's base lending rate prevailing from time to time and We shall be entitled to reasonable debt recovery costs as set out in the Late Payment of Commercial Debts (Interest) Act 1998 and the cost of obtaining judgement or payment to include all reasonable professional costs including legal fees and all other costs of pursuing a debt recovery procedure.

You shall not be entitled to set-off against sums due to Us under the Contract any amount You claim from Us whether under the Contract or some other contract between Us. We shall be entitled to set-off any sums owed by Us to You against any sums payable to Us under the Contract.

Without prejudice to any other rights and remedies which We may have under the Contract, We shall in respect of all debts owed by You to Us have a general lien on any of Your goods and property in Our possession and We shall be entitled after 14 days' notice to You to dispose of such goods or property as We think fit and to apply any proceeds of sale towards the payment of such debts.

8 Title to the Goods

8.1 Title to and property in the Goods shall remain vested in Us (even though they have been delivered and risk has passed to You) until:

the price of the Goods; and
 all other money payable by You to Us on any other account or under any other contract has been paid discharged or satisfied in full whether or not due for payment.

8.2 Until title to and property in the Goods pass to You the following provisions shall apply:

We may at any time without prior notice to You require You to deliver the Goods up to Us and We may repossess and resell the Goods if any of the events specified in Condition 15 occurs or if any sum due to Us from You under the Contract or on any other account or under any other contract is not paid when due.

You must store the Goods in a proper manner in conditions which adequately protect and preserve them without any charge to Us and not tamper with any identification upon the Goods or their packaging but shall ensure that they are clearly identified as belonging to Us. We will be entitled to examine the Goods in storage at any time during normal business hours but must give You reasonable notice of Our intention to do so and to enter upon any premises You own, occupy or control for that purpose.
 Our rights and remedies set out in this Condition 8 are in addition to and shall not in any way prejudice, limit or restrict any of Our other rights or remedies under the Contract.

You are authorised to sell the Goods in the ordinary course of Your business and to pass good title in the Goods to Your customers if they are purchasers in good faith without notice of Our rights but You are not authorised to give any representation or warranty on Our behalf regarding the Goods. This right shall automatically cease on the occurrence of any event specified in Condition 15 and/or if any sum owed to Us by You is not paid when due.

9 Performance of the Contract

9.1 Any delivery date or time quoted is a guide only and shall not be binding. Goods which are stated to be available "ex-stock" (or an equivalent term) are subject to availability. If We have used Our reasonable endeavours to comply with the delivery date but are unable to do so this failure shall not constitute a breach of contract entitling You to terminate the Contract and/or to claim any damages whatsoever against Us and We will be entitled to a reasonable extension of time in which to despatch or deliver the Goods. If Our performance of the Contract or any part of it is affected by circumstances beyond Our control such as (without limitation) industrial disputes, fire, severe weather conditions, decisions or actions of any government or other authority, shortages of materials, power or machinery breakdown or failure, war, threat of war, interruption or reduction in communications or means of transport, then We may suspend further performance of the Contract for so long as We are so affected and this suspension shall not constitute a breach of the Contract by Us.

If such suspension continues for more than eight consecutive weeks either of us may terminate the Contract by notice in writing. This shall not affect Our right to be paid under the Contract for any part of the Goods which We have despatched to You before We suspended performance of the Contract and to be reimbursed all other costs, charges and expenses We have incurred under the Contract up to the date of termination under this Condition.

9.2 If Our performance of the Contract is suspended following Our acceptance of a request from You or delayed through Your default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the Goods) We will be entitled to payment in accordance with the Contract for any part of the Goods which were already despatched to You or were ready for despatch or were being manufactured prior to the suspension or delay and also for loss of profit and any other additional costs that We incur including storage, insurance and interest provided that:

If You fail to collect or accept delivery of the Goods or any part of them within 28 days of notification from Us that the Goods are ready for collection or delivery, We will be entitled (without prejudice to Our other remedies under the Contract for such breach) to sell the Goods and to apply the proceeds of sale (if sold) towards payment of all outstanding sums owed by You to Us under the Contract;

We shall store the Goods at Your risk from the date upon which they are ready for despatch.
 Unless We otherwise expressly agree in writing, all illustrations and dimensions shown in any of Our catalogues or sales literature are approximate and We do not guarantee or represent that the Goods will in all cases be identical with the illustrations and dimensions.
 Any sample supplied by Us is supplied only to give You a general indication of the quality, colour and/or type thereof and will not constitute a subsequent sale a sale by sample.

10 Guarantee

"The following sets out Your rights in respect of any loss or damage arising from defects in the Goods or for any statements made by Us. Please read carefully. You are advised to obtain insurance against any losses You may sustain."

10.1 If You establish to Our reasonable satisfaction that:

there is a defect in the materials or workmanship of the Goods; or
 where You have supplied designs, drawings, specifications and other data relating to the Goods, there has been a failure by Us to supply the Goods in accordance with such designs drawings specifications or other data; or
 there is some other failure by Us in relation to the conformity of the Goods with the Contract; then We shall at Our option either:
 (i) in relation to such defective Goods or failure, re-supply Goods which are in all respects in accordance with the Contract; or
 (ii) agree with You that You will retain the Goods in the condition in which they are in consideration of a reduction in their price to compensate You for the defect or failure; (iii) refund to You the Contract price of such Goods; subject in every case to the remaining provisions of this Condition.

Paragraph 10.1 of this Condition ("the Guarantee") shall not apply unless You notify Us in writing of the alleged defect or failure immediately upon it becoming aware of it and in any event within 12 months of the delivery of the Goods to You under the provisions of Condition 5.

If We elect to replace the Goods, We shall deliver the replacement Goods to You at Our own expense at the address at which the defective or failed Goods were located and the title to the replaced Goods shall (if it has vested in Us and You shall make any arrangements as may be necessary to deliver up the replaced Goods to Us.

10.2 The Guarantee is in substitution for any other of Your legal remedies in respect of the alleged defect or failure and Our liability shall in all such cases and for all such purposes be limited to the obligations imposed by the Guarantee.

10.3 Nothing contained in this Condition 10 shall operate so as to:

exclude Our liability for death or personal injury resulting from Our or Our employees' or agents' negligence; or
 to limit the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979.

11 Exclusion of Liability

11.1 Except as provided in the Guarantee any term, condition, warranty, representation or undertaking on Our part as to the quality of the Goods or their fitness or suitability for any purpose or the standard of workmanship however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of Sections 13 to 15 inclusive of the Sale of Goods Act 1979 shall not apply to the Contract except where You deal as a consumer within the meaning of Section 3 of the Unfair Contract Terms Act 1977.

Except as and to the extent provided by the Guarantee We shall not be liable to You in contract, tort or for breach of statutory duty for any direct loss or damage in excess of the Contract price of the Goods or £500,000 (whichever is the greater) which You may suffer by reason of any act, omission, neglect or default (including negligence) in relation to the Goods and/or the performance of the Contract by Us or Our employees or agents.

Except as and to the extent provided by the Guarantee We shall not be liable to You in contract, tort or for breach of statutory duty for any indirect or consequential loss (including economic loss) of any kind whatsoever which You may suffer by reason of any act, omission, neglect or default (including negligence) in relation to the Goods and/or the performance of the Contract by Us or Our employees or agents.

Nothing in this Agreement shall impose on Us any liability in respect of any representation suggestion or comment with regard to the Goods made by Us or Our employees or agents in the course of any negotiations between Us leading to the making of the Contract unless We have expressly agreed in writing that such representation shall be a term of the Contract.

12 Indemnity

12.1 You acknowledge that We place particular reliance upon the provisions of the Contract and in addition to any other remedy available to Us, You irrevocably and unconditionally agree to indemnify Us, Our employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all direct and indirect damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees, economic loss, loss of profit, future revenue, reputation, goodwill, anticipated savings) and any consequential loss made against or incurred or suffered by any of them and whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

(a) the cancellation of any order by You after its acceptance by Us in accordance with Condition 2.1;

(b) the return of any Goods by or on behalf of You following delivery of such Goods to You;
 any breach by You of any of Your obligations under the Contract.

13 Advice

13.1 Where We provide advice (including component drawings) incidental to the supply of the Goods, relating to the Goods or any designs, specifications or requirements supplied by You, such advice is provided free of charge in good faith on the basis of the information supplied and does not obligate You to purchase the Goods.

Such advice will not constitute any representation that the Goods are fit for any particular purpose and We accept no responsibility for such advice. You must confirm and check such advice with Your architect, engineer or other suitably qualified person.
 In the circumstances that such advice is given We shall not be liable to You in any event for any loss or damage (whether direct, consequential or otherwise) arising from such advice (save for death or personal injury caused by Our negligence).

You agree the basis on which such advice is supplied as above and that Our liability is excluded and that this exclusion is reasonable in all the circumstances.

14 Assignment

14.1 You must not assign, sub-let or otherwise transfer the Contract or any part of it without Our prior written approval.

Except for members of Our Group of Companies (which means any subsidiary or holding company and any subsidiary of such holding company from time to time) who shall be able to enforce the Contract no third party shall have the benefit of the right to enforce these Conditions whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Even if a person who is not a party to the Contract has a right to enforce any of this Contract by virtue of the Act the parties may, notwithstanding, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

15 Breach of Contract by or insolvency of the Customer

15.1 If any of the following events occurs or in Our opinion is reasonably likely to occur:

(a) Our members of Our Group of Companies (which means any subsidiary or holding company and any subsidiary of such holding company from time to time) who shall be able to enforce the Contract no third party shall have the benefit of the right to enforce these Conditions whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Even if a person who is not a party to the Contract has a right to enforce any of this Contract by virtue of the Act the parties may, notwithstanding, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

16 Waiver

16.1 Our rights and remedies in respect of the Contract or in respect of any failure by You to observe or comply with the terms of the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by Us nor by any failure of or delay by Us in asserting or exercising any rights or remedies.
 17.1 If at any time any one or more of these Conditions (or any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, it shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired.

18 Application

18.1 These Terms and Conditions (as amended or revised by Us from time to time) shall apply to all future contracts between Us.

19 Headings

19.1 The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

20 Law and Jurisdiction

20.1 This Contract shall be governed by and be construed in all respects in accordance with English Law and subject to Condition 20.2 all disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.
 All disputes or claims arising out of or in connection with this Agreement may at Our discretion first be referred to an expert who shall be appointed by the Director from time to time of the Builders Merchants Federation. The expert's decision will be nonbinding and the parties may refer the dispute after the expert's decision has been made to the courts.