

GENERAL CONDITIONS OF SALE



Malvern Hills Science Park
Geraldine Rd, Malvern
WR14 3SZ - United Kingdom

t +44 (0) 1684 585148
info@fortop.co.uk
www.fortop.co.uk

1. CONSTRUCTION OF CONTRACT

- (1) These conditions shall apply to all contracts of sale between fortop and the buyer (hereinafter: 'the Contract').
- (2) The terms of the Contract shall consist of the particulars set out in fortop's order acknowledgement and these conditions.
- (3) No other terms (whether contained in any document issued by the buyer or in any written or oral communication between the parties) shall apply to the Contract nor shall these conditions or the particulars contained in fortop's order acknowledgement be modified without fortop's written agreement. Fortop shall be entitled to amend technical specifications of the goods delivered without notice.
- (4) In order that these conditions and the particulars in fortop's order acknowledgement shall be a complete record of the agreement between the parties with regard to the sale of the goods delivered, the buyer must ensure that any precontractual representation on which the buyer wishes to rely has been specified in those particulars. In entering into the Contract, the buyer does not rely upon any such representation made by or on behalf of fortop which has not been so specified.

2. QUOTATIONS AND ORDERS

- (1) Unless accepted before lapse or withdrawal, or renewed in writing by fortop, quotations shall lapse automatically after 30 days, but maybe withdrawn earlier.
- (2) Quotations are information only and are not firm offers. There shall be no binding contract until fortop has accepted the buyer's order by dispatching fortop's official acknowledgement of order or invoice.

3. DELIVERY

- (1) Although fortop will endeavor to deliver goods within any delivery time specified in fortop's acknowledgement of order, that time is an estimate only and not a term of the Contract and as such, time shall not be of the essence. Fortop shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly there from.
- (2) Any such time specified shall be extended by any period during which the manufacture or delivery of the goods or other work by fortop in connection with the Contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes (official and unofficial), riot, invasion, acts of war, shortage of labor, power or materials, civil commotion, accidents, plant breakdowns, compliance with an order of an apparently competent authority, and any other event beyond fortop's control.
- (3) If any such delivery time is so extended by more than 90 days the buyer shall be entitled to give written notice to fortop requiring the goods to be delivered within 30 days of the date of such notice failing which the buyer shall have the right to give further written notice terminating the contract forthwith.
- (4) Fortop will deliver the goods as one complete consignment directly to the customer unless otherwise stated by request of the customer. Failure by fortop to deliver any one or more of the installments or any claim by the buyer in respect of any one or more installments shall not entitle the buyer to treat the Contract as a whole as repudiated.
- (5) The delivery by fortop of a greater or lesser quantity provided for in the Contract, the delivery of other goods not provided for in the Contract, or the delivery of goods only some of which are defective, shall not entitle the buyer to reject all of the goods delivered. In order that fortop can comply with its carrier's conditions, a claim in respect of error in quantity or type of goods in respect of the condition of the goods delivered must be made in writing to fortop within 3 days or to the carrier and fortop within 5 days of receipt. Failure to make such claim shall constitute unqualified acceptance of the goods and waiver by the buyer of all claims relating to error in quantity or type of goods delivered or relating to the condition of goods delivered. Similarly, if any goods invoiced by fortop are not received by the buyer, the buyer must notify fortop within 25 days or the carrier and fortop within 28 days of the date of invoice, failing which the buyer will be liable to pay for the goods in full.
- (6) Fortop shall at its option make good any non-delivery short delivery or damage of goods notified in accordance with section 3.5 by repair or sending a replacing version of such goods and save as provided in these Conditions shall not be liable for any such non-delivery short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly there from. In no event shall fortop be liable to the buyer in connection with any damage or loss in transit where delivery takes place at fortop's premises.
- (7) If the buyer fails to take delivery of or collect the goods or fails to give fortop adequate delivery instructions after notification by fortop that the goods are ready fortop may (without prejudice to its other rights and remedies): store the goods (on its own or any third party's premises) and charge the buyer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or sell the goods at any time and after deducting all costs and expenses account to the buyer for any excess over the price already paid under the Contract or charge the buyer for any shortfall between the Contract price and such costs and expenses.
- (8) All returnable containers and packing materials will be charged for, but credit will be given if these are returned in condition satisfactory to fortop, to fortop's works carriage paid within thirty days following delivery of the relevant goods.

4. PROPERTY AND RISK

- (1) The risk in the goods shall pass to the buyer upon dispatch of the goods from fortop's warehouse.
- (2) Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain in fortop until fortop has received payment of all sums owing to fortop under the Contract and any other contract with the buyer whatsoever.
- (3) Until property in and title to the goods passes to the buyer: the buyer shall keep the goods properly stored, protected and insured and separate from all or any other goods whether belonging to fortop, the buyer, or any third party; fortop shall be entitled at any time forthwith to revoke the buyer's power to deal with the goods; and it shall automatically cease if the buyer shall commit or be subject to any Act of Insolvency*; and the buyer shall not make any modification to the goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the goods. Upon termination of the buyer's power to deal with the goods, the buyer shall place the goods at the disposal of fortop and fortop and its servants and agents are hereby irrevocably authorized without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the buyer or any third party for the purpose of removing the goods.
- (4) If any of the foregoing provisions of these conditions shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

5. PRICES

- (1) Unless otherwise stated in fortop's order acknowledgement, prices for the goods shall be ex-works, and shall be exclusive of VAT, packing, carriage, insurance, and any other costs, all of which shall be the subject of additional charges. VAT shall be charged where appropriate at the rate prevailing at the relevant tax point.
- (2) Any price quoted by the Company is based upon costs current as the date of quotation. The price charged to the buyer under the Contract may be changed to take account of costs current at the date

of invoice. Such changes may include, but are not limited to, fluctuations in rates of currency where the goods or any part thereof, are sourced from third countries.

6. PAYMENT

- (1) Subject to prior written agreement to the contrary, fortop shall be entitled to invoice the buyer for the price of the goods on or at any time after fortop has notified the buyer that the goods are ready for collection or fortop has tendered delivery of the goods.
- (2) If fortop has granted the buyer monthly account credit facilities, then payment of the price must be made within 30 days of the date of Invoice. Otherwise a Pro-forma invoice account will be made available. Payment shall be made direct to fortop in the currency invoiced. The buyer shall not be entitled to exercise any right of set-off against payment due to fortop.
- (3) Fortop shall be entitled to charge daily interest on any overdue sum at the rate of 5 per cent annum above the base lending rate for the time being of the Bank of England from the due date for payment to the actual date of payment (both before and after judgment).
- (4) Where payment is agreed to be made by installments, any delay or default by the buyer in making payment in respect of any one installment shall render all the remaining installments due forthwith, and interest will be charged in accordance with section 6.3 with immediate effect until the date of actual payment.
- (5) Fortop may appropriate any payment made by the buyer to such of the goods (or the goods supplied under any other contract between fortop and the buyer) as fortop may think fit (notwithstanding any purported appropriation by the buyer).

7. WARRANTIES AND EXEMPTIONS

- (1) If under proper use the goods develop any defect during the warranty period due to defective articles of materials supplied fortop shall at its own expense and option send a new product or repair such goods as are defective so as to remedy the defects except where such defects are attributable to accident, fair wear and tear, or any act omission or neglect of the buyer or of its agents. The buyer must give fortop notice of any alleged defects as soon as it becomes apparent, and shall (unless otherwise instructed by fortop) retain the goods at the buyer's premises for inspection by fortop and give fortop adequate facilities to investigate the complaint at the buyer's premises. The 'warranty period' shall mean the period specified in fortop's order acknowledgement as the warranty period and if no such period is specified, then a period of 6 months from the date of delivery of the goods.
- (2) Except as expressly stated above there shall be excluded from the contract and warranty, condition or statement, express of implied, statutory or otherwise, as to satisfactory quality, and/or fitness of the goods for any particular purpose.
- (3) Fortop shall not be liable to the buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by fortop its servants or agents.
- (4) Fortop shall not be liable to the buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss of profits loss of goodwill loss of contracts and/or any indirect or consequential (including economic) loss of any kind including loss of profits and/or loss of production which the buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by fortop, its servants or agents.
- (5) Provided that nothing in these conditions shall operate so as to exclude fortop's non-excludable liability in respect of death or personal injury caused by the negligence of fortop its servants or agents; or to exclude the application of Section 12 of the Sale of Goods Act 1979 or to exclude liability for fraudulent misrepresentation.

8. INSOLVENCY AND DEFAULT

- (1) Without prejudice to any rights and remedies available to it, fortop shall be entitled, forthwith on written notice to the buyer either to terminate the Contract in whole or in part and/or any other contract with the buyer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the buyer (and on the giving of such notice all monies outstanding from the buyer to fortop shall become immediately due and payable) if:
 - (i) any sum owing to fortop from the buyer on any account whatsoever shall be unpaid after the due date for payment (in which event fortop shall have a general lien for any such sum on all and any property of the buyer in its possession); or
 - (ii) the buyer shall commit or be subject to any Act of Insolvency; or
 - (iii) the buyer shall commit any breach of any contract (including without limitation the Contract) with fortop.
- (2) In the event of a suspension of performance fortop shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

9. CANCELLATION

The Contract may be cancelled in whole or in part by the buyer only with fortop's written consent and upon the condition that the buyer shall indemnify fortop in full against all loss, damages, costs expenses and other liabilities awarded against or incurred by fortop as a result of or in connection with the cancellation.

10. GENERAL

- (1) Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.
- (2) No failure or delay on the part of fortop to exercise any of its rights under the Contract shall operate as a waiver of nor shall any waiver by fortop of any breach by the buyer of any of its obligations under the Contract affect the rights of fortop in the event of any further or continuing breach.
- (3) The Contract is personal to the buyer, who shall not assign or in any way part with the benefit without fortop's prior written consent.
- (4) Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.
- (5) These conditions and the Contract shall not create or evidence, or be deemed to create or evidence, any agency or partnership between fortop on the one hand and the buyer or any third party on the other.
- (6) Any notice required to be given in writing under the contract shall be given, where possible, by facsimile transmission and otherwise by first class post addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received, in the case of a facsimile transmission, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.
- (7) The Contract shall be governed by English Law.
- (8) The parties irrevocably submit to the exclusive jurisdiction of the English Courts.

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An Act of Insolvency means any one or more of the following namely the passing of a resolution or the presentation of a petition for winding-up, bankruptcy or for the appointment of an administrator, the appointment of a receiver and/or manager or administrative receiver over the whole or any part of the Buyer's undertaking and assets, the making of a proposal for a voluntary arrangement within the Insolvency Act 1986 or of a proposal for any other composition scheme or arrangement with or the calling by the Buyer of any meeting of its creditors generally, the levying of execution or distress or diligence on any of its assets, the failure to pay its proper debts as and when due and anything analogous to any of the foregoing under the law of the jurisdiction where the Buyer is established