

Customer Copy:
STANDARD CONDITIONS OF TRADING OF KELLANDS (PLANT SALES) LTD. (PART OF KELLANDS GROUP)

1. DEFINITIONS

- (1) In these conditions:
- (i) "Accepted Order" means written and posted acceptance by the Company of the customers offer to purchase the goods described in this invoice/order
 - (ii) "Conditions" means the standard terms and conditions of trading of the company as set out herein
 - (iii) "Contract" means the contract for the supply of goods by the Company in the event of an accepted order subject to the Conditions
 - (iv) "the Company" means Kellands (Plant Sales) Limited and any subsidiary successor or assign
 - (v) "the Customer" means the person company or firm to whom this quotation or acknowledgement of order is addressed
 - (vi) "Delivery" means delivery of goods in accordance with clause 8 (i)
 - (vii) "Goods" means goods and/or resulting goods and/or services sold to the customer by the Company at the Customer's request
 - (viii) "Head Office" means the address of the company appearing on this invoice/order
 - (ix) "Resulting Goods" means goods as described in clause 12 (4)
- (2) In these conditions the masculine includes the feminine the plural includes the singular and vice versa

2. CONDITIONS

These conditions form the only basis of the contract between the Company and the Customer and supersede in all respects any prior agreement or representation written or oral made by the Company to the Customer. These conditions apply unless the contrary is expressly agreed in writing and signed by a director of the Company prior to an accepted order

3. ORDER ACCEPTANCE

No Contract between the Customer and the Company will exist or be deemed to exist unless and until an Accepted Order is in existence. An Accepted Order may only be cancelled or varied by the Customer with the Company's consent; the giving of the Company's consent does not in any way prejudice the Company's right to recover from the Customer full compensation for any loss or expense arising from such a cancellation or variation

4. INSPECTION AND NOTICE OF DEFECTS

- (1) The Customer acknowledges that he has not placed an order relying upon
- (a) any skill or expertise of the Company and/or
 - (b) any written or oral statements and/or representations made to him by the Company
- (2) The Customer also acknowledges that he has carried out or is deemed to have carried out a thorough inspection of the goods at delivery and is satisfied that there are no defects or shortages which a reasonable examination could have revealed
- (3) Any other defects in the goods which may exist or arise after delivery must be notified by the Customer to the Company in writing delivered to its Head Office within 7 days of the same becoming apparent but will be subject to condition 6(2) (f) hereof
- (4) In default of notification of any defects in accordance with this clause the Customer waives all rights against the Company

5. DESCRIPTION AND SAMPLE OF MATERIALS

- (1) Sizes and weights of goods are approximate only and to the extent that they do not correspond with their contractual description as to size and weight and any such difference shall not render the goods unsuitable for the buyers purpose the Customer must accept delivery of them
- (2) Notwithstanding that a sample of goods may have been shown to and/or inspected by the Customer, the Customer acknowledges that such sample was shown and inspected solely to enable the Customer to judge for himself the quality and description of the goods and in no way shall it be construed as to constitute a sale by sample or description. The Customer takes goods after any inspection at his own risk in all respects and for all purposes
- (3) The Company binds itself only to deliver goods in accordance with the general description under which they were sold whether or not any special or particular description was given or is implied by law. Any special or particular description given by the Company is an opinion only. The Company is not giving or implying any warranty or representation as to the quality state condition or fitness of the goods. The Customer takes all goods with all faults and imperfections and if he does not accept the goods on these terms they must be returned immediately

6. RECTIFICATION OF DEFECTS

- (1) Provided that the Customer has fully complied with clause (4) above and provided that the Company has been afforded reasonable time and opportunity for it to investigate any defects of which it has been notified by the Customer and to examine the goods then the Company at its sole option but without admitting any liability on its part may:
- (i) replace the goods or
 - (ii) accept the return of goods and to credit the Customer with the price thereof against future purchases of goods from the Company or
 - (iii) give the Customer an allowance representing the difference between the value of the goods at the time of delivery of the notification of defects as specified in clause (4) and the purchase price provided that the Customer pays the balance of the purchase price after deduction of the said allowance not in dispute according to normal terms
- (2) The Company has no liability under this clause if:
- (a) the Customer has not paid in full all invoices for goods supplied by the Company or any other monies due to the Company
 - (b) the Company's representatives are at any time denied full and free access to the goods
 - (c) persons other than the Company or those approved or authorised by the Company have effected or attempted to effect any replacement of parts or carry out or attempt to carry out any maintenance of adjustments or repairs to or otherwise interfere with the goods
 - (d) the Customer has not properly maintained the goods in accordance with instructions pamphlets or directions available given or issued by the Company or the manufacturer of the goods from time to time
 - (e) the Customer has used any spare parts or replacements not manufactured by or on behalf of the Company and supplied by it or fails to follow the Company's instructions for use of the same
 - (f) the claim by the Customer falls outside the ambit of any warranty given by the manufacturer of the goods
- (3) Notwithstanding that credit may have been given to the Customer for the payment of the purchase price of the goods the Company is entitled to retain possession of the goods until full payment of all monies owed to the Company
- (4) In addition to any right of lien to which the Company may be entitled the Company is in the event of the Customer's insolvency bankruptcy or liquidation entitled to a general lien on all of the Customer's goods in the Company's possession notwithstanding any or all such goods have been paid for until all outstanding monies due to the Company have been fully paid

7. LIMITATION OF COMPANY'S LIABILITY

- (1) The Company warrants that the goods conform to the contracts specification and with any sample referred to in the specification
- (2) The Company shall have no liability for any alleged failure of the goods to conform to the contracts specification unless such failure is notified within the time referred to in clause (4)
- (3) The Company shall not be liable for:
- (i) any economical loss suffered by the Customer as a result of the failure of any goods to conform to the contract specification including loss of profits, business, goodwill or other consequential losses
 - (ii) any loss or damage whether arising directly or indirectly as a consequence of any defect in the goods (whether arising from or caused by the negligence of the Company or otherwise)
 - (iii) provided however nothing in this clause shall apply to negligence of the Company that results in death or personal injury
 - (iv) the Company does not warrant that the goods are fit for any particular purpose of the buyer save as provided for in this clause, the Company shall have no liability for any defect in the quality of the goods or their failure to correspond to any description or sample or to be fit for any purpose and all other conditions, warranties, stipulations and undertakings whether expressed or implied by statute or common law are excluded
 - (v) in any event the entire liability of the Company under or in connection with this contract shall not exceed the purchase price

8. DELIVERY

- (1) The goods shall be delivered or be deemed to be delivered to the Customer when they are available for collection from the Company's premises or actually delivered to the Customer's address indicated on this invoice/order at the Company's option
- (2) The Company undertakes to use its reasonable endeavors to deliver the goods in accordance with clause (1) above on the agreed date. Any stipulation of a delivery date by the Company is an approximate date only and the Customer acknowledges that no guarantee is given
- (3) Time of delivery is not of the essence of the contract and these conditions
- (4) Delivery times are conditional upon and subject to receipt by the Company of all proper and coherent instructions by the Customer within such period (were none is quoted) as shall be reasonable. If delivery is delayed or hindered as a direct or indirect result of the Customer's instruction or lack of them or if work on the Customer's order is suspended on the Customer's instructions or because of the lack of such instructions the purchase price of the goods will be increased to cover any extra expense which may be incurred by the Company.
- (5) If the Customer fails to accept delivery of the goods the Company is entitled (without prejudice to its other rights) to store and insure the goods and to charge the Customer the cost of so doing. Delay in acceptance will not in any way affect the liability of the Customer to pay the purchase price of the goods
- (6) (a) If delivery under the Contract is by instalments then each delivery is deemed to be a separate contract
(b) Any failure delay or defect in respect of any delivery does not entitle the Customer to treat the Contract as repudiated

9. VALUE ADDED TAX

Unless otherwise specified Value Added Tax and any other tax duty or levy payable by the Customer shall be added to the purchase price calculated as at the date of delivery.

10. QUOTATIONS AND VARIATIONS TO THE CONTRACT

- (1) Any quotation given by the Company does not constitute an offer. The Company reserves the right to withdraw or revise any quotation prior to an accepted order
- (2) The Company at its sole discretion reserves the right to amend the terms of the contract and/or the purchase price as a result of one or more of the following variations occurring
- (i) specification or description of the goods at the request of, or with the agreement of the Customer

- (ii) wage rates, working conditions, cost of materials transport taxation government levies or increases in manufacturers' prices of parts or whole goods
- (iii) work which is required to be done outside normal working hours or days
- (iv) suspension or delay of site work for reasons outside the control of the Company
- (v) additional transport storage or handling of goods resulting from the Customer being unable or unwilling to accept delivery of goods in accordance with the Contract
- (vi) failure by the Customer to comply with any other clause of these conditions
- (vii) additional quantities of materials supplied or labour involved

11. PAYMENT OF THE PURCHASE PRICE

- (1) (a) The purchase price in respect of whole goods must be paid on or before delivery
(b) In respect of all goods which shall not constitute Whole Goods payment shall be made on or before the twentieth day of the calendar month next following the month during which the invoice is date
- (2) Interest will accrue daily on overdue accounts at the rate of 8 % per month
- (3) In the event of default in payment of the purchase price or any instalment thereof the Customer immediately loses the benefit of any previously agreed special terms
- (4) (a) Where payment is by instalments, the Company is not bound to take any step in performance of the contract until the Customer has paid the first instalment
(b) If the Customer defaults in payment of the second or any subsequent instalment then
(i) the Company is entitled (at its option and without prejudice to any other remedies) to suspend or terminate its performance of the contract
(ii) the Customer must
(a) forthwith procure a bank guarantee in favour of the Company upon such terms and for such amount as the Company requires
(b) return the goods to the Company or make them available for collection

(5) The equitable and beneficial ownership of all materials delivered by the Company shall only be transferred to the Customer when the Customer has met all that is owing to the Company on whatever grounds

12. RISK AND PASSING OF PROPERTY

- (1) Risk in the goods passes to the Customer on delivery or on appropriation by the Company of the goods pursuant to the contract in the event of the Customer being unable or unwilling to accept delivery
- (2) Until the purchase price has been paid the Customer has possession of the goods only as bailee for the Company and shall store and mark the goods in such a way as to enable them to be easily identified as the property of the Company
- (3) If the Customer is purchasing the goods for resale he may as agent for the Company sell and deliver the goods to a third party provided that such sale and delivery is in the ordinary course of the Customer's business and on condition that until payment in full of the purchase price is made the Customer holds all gross proceeds of sale upon trust for the Company and in a separate account in the name of the Company and the Customer. The Customer hereby irrevocably assigns to the Company all rights and claims (but not liabilities) which the Customer may have against its customers arising from such sales until payment of the purchase price
- (4) If the goods are combined with other items or materials or utilised or consumed in the production or manufacture of other items materials or goods ("resulting goods") the Company shall have legal and beneficial ownership of the resulting goods and the Customer must:
- (a) store such resulting goods in the manner set out in clause (2) above until sale by the Customer in the ordinary course of business upon the same terms or
 - (b) may sell and deliver such resulting goods to a third party subject to the provisions of this clause 12
- (5) (a) The Company reserves the right to re-possess any goods if any payment due to the Company is overdue
(b) Thereafter the Company may re-sell the goods and for this purpose the Customer hereby grants an irrevocable right and licence to the Company to enter upon all or any of its premises with or without vehicles during normal business hours
(c) This right shall continue notwithstanding the termination or the contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise
- (6) (a) Until full payment of the purchase price has been made the Customer must at his own expense keep the goods insured in the joint names of the Customer and the Company with such period and amounts upon such conditions and with such insurance Company as the Company shall in its absolute discretion think fit
(b) The Customer must forthwith on demand produce to the Company the policy of insurance and satisfactory evidence that the policy remains force as the Company shall deem necessary
(c) In the event of default by the Customer in complying with clause (a) and/or (b) above the Company may take out such insurance as it deems fit in respect of the goods the cost is hereby acknowledged by the Customer as a debt payable by the Customer to the Company
- (6) The Customer must pay all accounts in full and must not exercise any right of set-off or counterclaim against the Company's invoices.

13. ASSIGNMENT OR SUB-LETTING

- (1) The Customer must not assign or attempt to assign the Contract or any part of it or any benefit or interest therein or thereunder without the prior written consent of the Company
- (2) The Company reserves the right to assign the Contract and/or sub-contract all or any part of the goods supplied under the Contract as it may in its absolute discretion think fit

14. FORCE MAJEURE

The Company is not liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the increased cost of and/or delay or failure to supply goods and/or the Company being prevented hindered delayed by reason of circumstances or events beyond the reasonable control of the Company including but not limited to act of god, war, riot, civil disobedience, strike, lock out, trade dispute or labour disturbance, accident, break down or plant or machinery fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the goods or of raw materials by the Company's normal source of supply of the manufacture of the goods by the Company's normal means or the delivery of the goods by the Company's normal route or means of delivery

15. INSOLVENCY AND DEFAULT

- (1) The Contract is deemed to terminate immediately prior to the occurrence of any one or more of the following events:-
- (A) If the Customer
 - (i) enters into a deed of arrangement
 - (ii) commits an act of bankruptcy
 - (iii) compounds with his creditors
 - (iv) has a receiving order made against him or if (being a company) an order is made or resolution is passed for the winding up of the Customer (otherwise than for the purposes of amalgamation or reconstruction)
 - (B) If the Customer
 - (i) if a receiver is appointed of any of the Customer's assets or undertaking
 - (ii) if circumstances arise which entitled a court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order or if the Customer takes or suffers any similar or analogous action
- (2) In the event of termination of the contract the company may without prejudice to any other rights
- (a) stop any goods in transit and/or suspend further deliveries and/or determine the rights of the Customer under condition 11
 - (b) by notice in writing to the Customer or to the receiver or liquidator or to any person in which the contract may have become vested determine and the contract and/or
 - (c) give to such receiver liquidator or other person to the option or performing the contract subject to his providing a guarantee for the due and faithful performance of the contract

16. LICENCES AND CONSENTS

- (1) If any licence or consent of any government or other authority is required for the purchase acquisition carriage or use of the goods by the Customer the Customer must obtain the same at his own expense and if necessary produce evidence of the same to the Company on demand
- (vii) Failure to procure and/or produce any relevant licence and/or consent shall not entitle the Customer to withhold or delay payment of the price. The Customer hereby indemnifies the Company against any additional expenses or charges incurred by the Company as a result of such failure

17. STATUTORY REQUIREMENTS AND INFRINGEMENT OF PATENTS

Every effort is made by the Company to meet known statutory requirements and not to infringe any patents or trademarks belonging to third parties but no guarantee is given that the design construction and quality of the goods supplied under the contract comply with all relevant requirements of any statute statutory rule or order or other instrument having the force of law and which may be in force at the time of supply nor that the sale or use of the goods by the buyer would not infringe any British Patent Trademark trade name or registration design

18. NOTICES

Any notice hereunder shall be deemed to have been duly given if sent by pre-paid first class post or telex or facsimile machine to the party concerned and in the case of the Company at its Head Office and Registered Office and in the case of the Customer at the address on this invoice/order. Notices sent by first class post shall be deemed to have been given three days after dispatch provided it is actually proven to have been served during normal working hours

19. ARBITRATION

All disputes differences or questions at any time arising between the parties as to the construction of the contract or as to any matter or thing arising out of the contract or in any way connected with it shall be referred to the arbitration of a single arbitrator who shall be appointed by the parties or failing agreement shall be appointed at the request of either party by the President for the time being of the Law Society. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts

20. PROPER LAW

These conditions and any contract shall be construed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English Courts. English law shall be the proper law of the contract. All claims under the contract shall be settled by reference to the English legal system

21. INVALIDITY

The invalidity, illegality or unenforceability in whole or in part of any of the terms and conditions of this contract shall not effect the validity, legality and enforceability of the remaining terms and conditions of this contract

22. ENTIRE AGREEMENT

This contract and the documents referred to herein contain the entire agreement between the parties and supersedes all previous written and oral agreements relating to the subject matter

Please Note: These Terms and Conditions can be supplied in larger print, should you require.