

Constructor Group UK Limited - General Conditions of Sale

1. DEFINITIONS

- 1.1 The term "the Company" shall mean all or any of Constructor Group UK Limited, Planned Storage Systems Limited or Dexion Comino Limited (of which Bruynzeel is a trading division).
- 1.2 "Customer" means the person, firm or company whose order is accepted by the Company.
- 1.3 "Goods" means all those goods, services, materials and equipment specified in the quotation overleaf or any amendment thereto agreed in writing between the Company and the Customer and which are to be supplied to the Customer by the Company under these conditions of sale. Services will include installation, annual inspection or the provision of any advice.
- 1.4 "Contract" means the contract for the purchase and sale of the Goods.
- 1.5 "Site" means the place where the installation (where applicable) of the Goods is to be carried out.
- 1.6 The headings in these conditions are for convenience only and shall not affect their interpretation.

2. BASIS FOR SALE

- 2.1 All Goods sold by the Company are sold subject to these conditions and these conditions shall be the sole terms and conditions of any sale by the Company to the Customer. Terms and conditions on the Customer's order form or other document or otherwise shall not be binding on the Company.
- 2.2 Amendments, variations or additions to the Contract are binding only if confirmed in writing by the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representation which is not so confirmed.

3. ORDERS AND SPECIFICATIONS

- 3.1 Upon receipt of the Customer's order, the Company will confirm price, quantities and delivery date. These will usually be fixed, and if it is not so, specific mention of alternative arrangements will be incorporated into the Contract.
- 3.2 An order submitted by the Customer shall be deemed to be accepted by the Company when it is confirmed in writing by the Company's authorised representatives subject to these terms and conditions.
- 3.3 Once an order has been accepted by the Company the Customer may only cancel with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), cost (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.4 Orders accepted by the Company are subject to the availability of Goods for delivery.
- 3.5 All drawings, photographs, illustrations, performance data, dimensions, weights and other technical information and particulars of the Goods are given by the Company in the belief that they are as accurate as reasonably possible but are not to be treated as binding or forming part of the Contract. The Company reserves the right to alter the design and specifications of the Goods at any time without notice.
- 3.6 The Customer will if requested by the Company, take any reasonable steps to satisfy the Company prior to execution of the order as to the Customer's credit worthiness, such as the provision of trade and banker's references or of the guarantee of payment from a third party acceptable to the Company. The Company reserves the right to refuse the order, to delay the execution of the order, to request payment in part or in full prior to execution of the order, or to cancel any Contract entered into with the Customer prior to commencement of deliveries to the Customer if the Company's normal enquiries indicate that the Customer's credit may not be sufficient to meet the needs of a Contract.

4. PRICE

- 4.1 The prices contained in the quotation may be correspondingly increased (subject to any statutory exception) where, between the date of the quotation and the completion of the order there are increases in the scheduled rates, materials prices, or other charges of the Company or where the Customer requests work to be performed by the Company outside its normal working hours.
- 4.2 Unless otherwise agreed in writing, all prices given by the Company include delivery.
- 4.3 Unless otherwise agreed in writing, the Company shall package the Goods as the Company in its discretion considers appropriate in the light of the nature of the Goods and the method of transportation. All returnable packing cases, pallets and other containers and packing for the Goods provided to the Customer will be charged to the Customer additionally at the Company's current prices, but such charge will be refunded by the Company to the Customer if the packing materials are returned to the Company's designated warehouse carriage paid and in good condition within 30 days of their despatch to the Customer. Any special packaging will be at the Customer's expense and may delay delivery.
- 4.4 The price is exclusive of Value Added Tax and all other taxes, duties and expenses in respect of the Goods, all of which shall be payable by the Customer unless otherwise stipulated in writing by the Company.

5. PAYMENT

- 5.1 Unless otherwise agreed in writing, payment by the Customer shall be made within thirty (30) days of the date of the invoice. All payments must be made to the Company or alternatively, by credit transfer to Danske Bank (Bank Code 30-12-81) account the Company number 22007963, at 75 King William Street, London EC4N 7DT.
- 5.2 The time of payment shall be of the essence of the Contract.
- 5.3 If payment is not made when due, the Company may, without prejudice to its other rights, charge interest at an annual rate of 4% above the current base rate of Danske Bank PLC to be calculated on a day to day basis on the balance outstanding until payment is made in full.
- 5.4 The Customer shall not be entitled to and shall not purport to set off, withhold or deduct any payments claimed by or due to the Customer under this Contract or under any other contract between the Customer and the Company.
- 5.5 Without prejudice to any other remedy, if the Customer fails to make any payment by the due date, the Company may after giving appropriate notice to the Customer of its intention so to do, suspend any work related to any contract with the Customer until any such delay payment has been received by the Company and the Company shall be entitled to claim any costs reasonably incurred as a result of such a suspension of work and, in addition be entitled to a reasonable extension of time to any programme or programmes agreed for completion of such work.

6. DELIVERY

- 6.1 Unless agreed by the Company in writing, delivery of the Goods shall be effected at the Customer's premises or (if earlier) at the premises of the Customer's specified agent, by the Company delivering the Goods at that place.
- 6.2 Any dates stated for despatch or delivery of the Goods, installation or completion of a contract are approximate only and the Company accepts no liability for loss or damage, either direct, indirect or consequential, resulting from such delay or failure to deliver the Goods for any reason whatsoever.
- 6.3 Any delay in delivering the Goods shall not give rise to a right by the Customer to treat the Contract as repudiated or to reject the Goods.
- 6.4 If the Customer refuses or fails to take delivery of the Goods at the time stated for delivery the Company shall be entitled, at its discretion, to store the Goods at the risk of the Customer. The Customer shall in addition pay all costs and expenses of such storage and any additional costs of carriage incurred.
- 6.5 The Company reserves the right to deliver by instalments at its discretion. These conditions shall apply to each such delivery.
- 6.6 Where the Company delivers the Goods at the Customer's premises:
 - 6.6.i The Customer shall inspect the Goods on delivery and shall notify the Company in writing within three (3) days of any shortages or any damage in transit.
 - 6.6.ii The Customer shall also on delivery mark on the carrier's receipt note the details of any visible damage in transit.
 - 6.6.iii The Company will not consider any claims made by the Customer in respect of shortages or damage in transit unless these conditions are observed.
 - 6.6.iv The Customer shall provide, at the Customer's own expense, all necessary labour and equipment to offload the Goods on their arrival at the delivery address.

7. DAMAGED GOODS

- 7.1 If the Company is satisfied that any damage to the Goods occurred prior to delivery, the Company shall at its option:-
 - 7.1.i Repair or replace any Goods or part of the Goods so damaged; or
 - 7.1.ii Allow to the Customer credit in respect thereof of such amount as may be agreed with the Customer, or in default settled by the Company at its discretion.
- 7.2 The Company's liability in respect of damage to the Goods shall be limited to repairing, replacing or allowing credit as in clause 7.1.ii above.

8. SHORT DELIVERY

- 8.1 If the Company is satisfied that the Goods have been short delivered, the Company shall at its option:
 - 8.1.i Make up any short delivery by despatching to the Customer such Goods as the Company is satisfied were not delivered or
 - 8.1.ii Allow the Customer credit in respect thereof.
- 8.2 The Company's liability in respect of short delivery shall be limited to making up the delivery or allowing credit as in clause 8.1 above.

9. RISK AND TITLE

- 9.1 Except where the order includes installation the risk of loss and damage to the Goods shall pass to the Customer immediately upon delivery.
- 9.2 Until the Company has been paid in full for all Goods supplied to the Customer under this Contract or any other contract between them and for all other sums due:-
 - 9.2.1 Notwithstanding delivery and the passing of risk, the Company shall retain legal and beneficial title to the Goods supplied which the Customer shall hold as bailee and fiduciary for the Company;
 - 9.2.ii The Customer shall safely store the Goods while in the Customer's possession until payment has been made to The Company in such a way that they are clearly identifiable as The Company's property;
 - 9.2.iii The Customer shall keep the Goods separate from those of the Customer and third parties and shall keep the Goods properly stored, protected and insured and any Goods in the Customer's possession shall be deemed to belong to the Company unless the Customer can prove that they have been paid for;
 - 9.2.iv The Company shall be entitled to trace the proceeds of any sale of Goods owned by the Company and any insurance proceeds received in respect of Goods owned by the Company. Such proceeds shall on the Company's request be paid into a separate bank account and shall be held by the Customer on trust for the Company;
 - 9.2.v The Company shall have the right, without prejudice to any other remedies at any time whether or not any sums owed to it are overdue, to enter, without prior notice, any premises, and to repossess and dispose of any Goods owned by it.
- 9.3 If the Customer enters into, or does anything to enter into, an agreement with its creditors, liquidation, receivership, administrative receivership or administration, it must give immediate written notice to the Company and surrender possession of the Goods to the Company.
- 9.4 Nothing in this clause shall prevent the Company from suing for the price when due.
- 9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall without prejudice to any other right or remedy of the Company forthwith become due and payable.
- 9.6 Nothing in these clauses shall prevent the Company from being able to pass title to the Goods to the Customer by giving notice in writing.

10. INSTALLATION OF THE GOODS

- The following conditions shall apply in addition to the preceding conditions where the order provides for installation of the Goods ("the Works").
- 10.1 It shall be the sole responsibility of the Customer to ensure that the floors and foundations upon which installation of the Goods is to be carried out are suitably surfaced (and comply with the tolerances required by the Company) and are of adequate strength to support the Works and maximum loads to be imposed on the Works.
 - 10.2 The Customer shall at his own cost and prior to the date of the commencement of the Works prepare the floors or surfaces on which the Works are to be installed in accordance with the Company's requirements. In the event that the Customer fails to comply with his obligations under this clause, on discovery of such an event, the Company may at its discretion refuse to commence or continue with the Works until such time as the failure has been rectified and the terms of clauses 10.11 and 10.12 hereof will expressly apply.
- Without prejudice to any other remedy that the Company may have herein or otherwise, any additional costs or expenses which the Company may reasonably incur due to such floors or services not being in accordance its requirements shall be invoiced by the Company to the Customer and paid by the Customer in accordance with the terms of clause 5 hereof.

Notwithstanding anything contained herein or otherwise to the contrary the Company shall have no responsibility for the proper working of the Works if the floors and services on which the Works are installed are not in accordance with the requirements given to the Customer by the Company.

10.3 The Company will not undertake or be responsible for any builders' work or other work which involves alteration to the structure (including the floors) or the foundations of any building on the Site unless included in the specification or otherwise agreed in writing between the Company and the Customer.

10.4 The Customer will at his own expense provide the following services and attendances to the Company to facilitate the works:

10.4.i secure waterproof storage accommodation for the Goods and for the Company's construction plant and equipment immediately adjacent to that part of the Site where the Works will take place.

10.4.ii prior to the commencing of the Works, clearance of the Site of all obstructions and other trades or operations to ensure that the Works can be carried out in one continuous uninterrupted operation during the Company's normal working hours.

10.4.iii lighting of sufficient intensity to enable the Works to be carried out safely and power supplies suitable for operation of construction plant and hand power tools.

10.4.iv here the Goods require a source of power for their operation, provision of power supplies in the manner and at such locations on the Site as the Company shall specify.

10.4.v in addition to off-loading Goods, conveyance of the Goods to that part of the Site where the Works will take place.

10.5 The Customer will ensure that prior to the commencement of the Works the Site is secure and watertight.

10.6 The Customer will ensure that during the course of the Works and until such time as the Works are handed over to the Customer the Goods are protected from loss or damage and from dust and dirt arising from the activities of the Customer or any third party on the Site.

10.7 If for any reason not attributable to the Company the carrying out of the Works is suspended, delayed or hindered the Company has every right to claim interim payment or payments on account and render interim invoice or invoices to the Customer for payment accordingly, irrespective of any schedule of payments previously agreed between the Customer and the Company.

10.8 Any surplus Goods delivered to the Site shall remain the property of the Company. The Customer shall take all reasonable precautions for the safe custody and protection of such surplus Goods until the time of their removal by the Company.

10.9 The Customer at his own expense shall be responsible (other than for statutory obligations placed solely on the Company) for obtaining all consent, permissions, easements and licences for the carrying out of the Works in accordance with the terms hereof and for conforming with all statutes and orders regulations and by-laws made thereunder applicable at any time to the Works and shall indemnify and keep indemnified the Company against all actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause. The Company shall (so far as it is reasonably able) provide such information with respect to the Works as the Customer may request in respect of any applications for such consent, permissions, easements or licences as aforesaid.

10.10 Where the Contract provides for installation of the Goods the risk of loss and damage to Goods shall pass to the Customer immediately at the time of notification to the Customer of the physical completion of the work.

10.11 Where installation work is involved the Company shall endeavour to complete such work within the time scales agreed with the Customer, or in the absence of such agreement as soon as reasonably possible. The Company shall not be liable for any costs, losses, expenses or damages caused by any delay in dispatch of the goods or in completion of the installation work connected therewith. In the event of any such delay the Company shall be entitled to such additional time as may be necessary to complete the Contract and where appropriate to allocate its products and services among its customers in such manner as it considers fair and reasonable. Under no circumstances shall the Customer be entitled to cancel the Order in the event of any such delay unless with the specific consent of the Company on mutually acceptable terms.

10.12 If the Customer requests a suspension of any installation work or if the Company is delayed by the acts or omissions of the Customer, the Customer's servants or agents or any third party not under the Company's direct control then the Company shall be entitled to invoice the Customer with any costs or expenses reasonably incurred by the Company arising from the suspension or delay and such costs or expenses shall be paid by the Customer. The Company shall also be entitled to such additional time as may be necessary to complete the Contract.

11. WARRANTIES AND LIABILITY

11.1 The Company warrants that, insofar as they have been manufactured by the Company, the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of six (6) months from the date of delivery. The Company will at its option refund the purchase price of, or repair or replace free of charge, such part of the Goods which its examination confirms are defective provided:

11.1.i The defect was notified to the Company within three (3) days from the date of delivery, or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, and in any event within six (6) months of delivery;

11.1.ii The defects are not caused by fair wear and tear, neglect, misuse or improper adjustment;

11.1.iii The Customer has used the Goods strictly in accordance with any instructions or recommendations of the Company or any tolerances, capacity limits or other specifications of the Goods laid down by the Company whether orally or in writing;

11.1.iv Any defect in the Goods does not arise from any drawing, design or specification applied by the Customer;

11.1.v The total price for the Goods has been paid by the due date for payment; and

11.1.vi The Customer has allowed the Company reasonable opportunity to inspect the Goods and such inspection confirms that the Goods are defective.

11.2 In no circumstances shall the Company's liability to the Customer for any breach of this clause exceed the price paid for the Goods with respect to which the claim is made.

11.3 In no circumstance shall the Customer be entitled to reject the Goods, delay acceptance or refuse payment of the price.

11.4 Except as expressly provided for in these conditions, all warranties and conditions express, implied, statutory or otherwise as to quality or fitness of any of the Goods for any particular purposes or of any other kind except as to title are hereby excluded.

11.5 Except in respect of death or personal injury caused by the Company's negligence, or by the Goods being defective and in respect of loss or damage to private property caused by the Goods being defective, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any direct, indirect or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, except as expressly provided in these conditions.

11.6 Without prejudice to any other provisions hereof the Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control, including without limitation any strikes, lock-outs or other industrial action or trade disputes (whether involving employees of The Company or of a third party).

11.7 The Company accepts no liability for injuries, expenses or damages caused by the incorrect faulty or improper assembly and installation or use of the Goods by the Customer. The Customer undertakes to take all steps sufficient to ensure so far as is reasonably practicable that the Goods will be safe and without risk to health by using them properly and in accordance with the recommendations of the Company. Advice on assembly and installation is available on request from the Company's technical division to whom reference should be made if the Customer proposes to change the structure or significantly change the use of the Goods.

12. INDEMNITY

12.1 The Customer shall indemnify the Company from and against all costs, claims, damages, expenses and losses (including loss of profits) whether direct, indirect, special, consequential or otherwise arising out of or in any way connected with the use by the Company of the Customer's specifications or any failure of the Customer to comply with its obligations under the Contract in all respects or any improper use of the Goods by the Customer.

13. COPYRIGHT

13.1 All technical data, specifications, drawings, reports, documents and information whatsoever which The Company submits to the Customer in connection with the Contract (and the copyright therein) shall remain the Company's property and must not be copied or shown to any third party without the Company's express consent being obtained in advance and in any event upon the condition of a similar condition being imposed upon any third party and must be returned to the Company on demand together with any copies made thereof. The Customer undertakes to use any technical data, specifications, drawings, reports, documents or information whatsoever which the Company submits to the Customer in connection with the Contract only for the erection and/or maintenance of the Goods forming the subject matter of the Contract.

14. PATENT RIGHTS

14.1 So far as the Company is aware, the Goods do not infringe any existing U.K. Patents or designs or any other industrial or intellectual property rights but no warranty express or implied is given in respect of such infringement. However, in the event of any claim being made or action being brought against the Customer in respect of any infringement of patents or designs or other industrial or intellectual property rights by the use or sale of the Goods the Customer shall notify the Company immediately and the Company may at its own expense conduct through its own lawyers and experts all negotiations in settlement of the same or any litigation that may arise therefrom.

15. TERMINATION

15.1 The Company shall, without prejudice to any other right or remedy available to the Company, and by giving notice in writing to the Customer, be entitled to suspend or cancel any uncompleted part of the Contract or stop any Goods in transit or require any payment in advance or satisfactory security for further deliveries under the Contract in the event that:

15.1.i The Customer defaults in any payment or is otherwise in breach of its obligations to the Company under the Contract or under any other contract with the Company; or

15.1.ii The Customer makes a voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or commits an act of bankruptcy or (being a company) goes into liquidation; or

15.1.iii An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer; or

15.1.iv The Customer ceases, or threatens to cease, to carry on business; or

15.1.v The Company has reasonable cause to believe that any of these events is likely to occur and notifies the Customer accordingly.

16. ASSIGNMENT

16.1 The Customer shall not assign or transfer or purport to assign or transfer the Contract or the benefit of it to any other person without the written consent of the Company.

17. NAMEPLATES AND TRANSFERS

17.1 It is condition of sale that no nameplate or transfer affixed by the Company to the Goods shall be removed or covered up without the consent in writing of the Company.

18. PERFORMANCE

18.1 The Company shall be entitled to arrange for its obligations under these conditions to be performed by a Sub-contractor: The Company will remain fully responsible for the performance of its obligations.

19. WAIVER

19.1 The failure of the Company to insist upon strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such terms or conditions and shall in no way affect the Company's right to enforce such provision later.

20. SEVERABILITY

20.1 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

21. GOVERNING LAW

21.1 The construction, validity and performance of the Contract shall be governed by English Law and the parties shall accept the jurisdiction of the English courts.