

Tarff Valley Limited -Terms and Conditions

1. Introduction

1.1 These Terms and Conditions govern your relationship with Tarff Valley Ltd and apply to all quotations, offers, orders and contracts for sale of goods.

1.2 In these Terms and Conditions, unless stated otherwise

“Goods” – means the goods which the buyer agrees to purchase from Tarff Valley Ltd,

“Buyer” – means the purchaser of the goods and services from Tarff Valley Ltd;

“Tarff Valley Ltd” – means the Company whose Registered Office is at Old Station Yard, Ringford, Castle Douglas DG7 2AN, selling the goods, otherwise referred to as “the Seller”;

“Sales Agreement” – means these terms and conditions, the sales contract and written invoices defining the agreed relationship between the Buyer and the Seller.

1.3 The Terms and Conditions constitute the entire understanding of the parties and supersede all prior discussions, negotiations, agreements and understandings, whether oral or written. No change or modification of the Terms and Conditions (including change orders) is valid unless it is IN WRITING AND SIGNED BY ALL THE PARTIES who are bound by the Terms and Conditions.

If any part of the Terms and Conditions is held invalid, unenforceable or void by a court of competent jurisdiction, the Terms and Conditions are considered divisible as to such part, and the remainder of the Terms and Conditions are valid and binding as though such part was not included in the Terms and Conditions. Should a litigation or dispute resolution process be necessary to enforce the Terms and Conditions, the parties agree that jurisdiction and venue are waived and suit shall be brought in the county of the principal office of The Seller. The Terms and Conditions are governed by the laws of Scotland (without regard to the laws that might be applicable under principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The Terms and Conditions may be executed in two or more parts, each of which shall be deemed an original but all of which together shall be one and the same instrument.

1.4 Nothing in these Terms and Conditions affects the statutory rights of any consumer.

2. Order

2.1 Any offer or acceptance of a quotation made by the Buyer will be deemed to be an offer to purchase the goods governed by these Terms and Conditions.

2.2 No offer or acceptance of a quotation will be deemed a binding agreement of sale until confirmed in writing by a Sales Agreement with an invoice issued by the Seller. The Seller reserves the right to issue their invoice at the time of delivery of the Order. Upon confirmation of order or delivery of the goods, these Terms and Conditions (as they may be amended by the Seller (from time to time) form a binding agreement between the Buyer and the Seller.

2.3 Any goods or services not confirmed by written invoice are deemed additional work and must be agreed in writing signed by both parties. These Terms and Conditions are applicable to any additional work or sales accrued to the Buyer by the Seller.

3. Price and Payment Methods

3.1 The price shall be the price offered by the Seller and confirmed by written invoice.

3.2 The Price is exclusive of VAT which shall be payable by the Customer at the rate prevailing on the date of the VAT invoice. Any fees, duty or taxes applied will be billed to and paid by the Buyer as set forth on the written invoice issued by the Seller.

3.3 Except as otherwise agreed by the Seller in writing, all prices are given by the Seller on the basis of delivery taking place at the Seller's premises. The Buyer shall be responsible for the cost of transport and packaging and where the Seller agrees to arrange for the Goods to be insured in transit, the Buyer shall be responsible for the cost of insurance.

3.4 The Seller shall be entitled to invoice the Buyer for the price of the Goods before on or at any time after delivery of the Goods.

3.5 Unless otherwise agreed in writing by the Seller, payment of the full Price plus VAT and any other applicable costs in cash or cleared funds shall be due by the last day of the month following the month in which the goods are delivered.

3.6 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim, discount abatement or otherwise which the Buyer may have or allege to have or for any reason whatsoever.

3.3 All payment shall be made in British Pound Sterling. Payment can be made via cheque or bank transfer directly to the Seller's nominated company account.

3.4 In the event of a deposit payment being made for the goods this deposit is non-refundable, unless agreed otherwise in writing.

3.5 The Buyer will have 30 days from the date of invoice to make payment in full, unless agreed otherwise.

3.6 Neither late payment fees nor interest will be charged by the Seller to the Buyer in the event that payment in full is made within the 30 day period following the issue of the Seller's invoice. However the Seller reserves the right to issue to the Buyer further monthly invoices to the value of 1% of the sum outstanding at the end of each monthly accounting period. Nothing in these provisions will restrict the Seller's right to claim compensation and statutory interest under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any statutory amendments thereto.

4. Goods

4.1 The goods to be purchased shall be specifically described in the written invoice provided by the Seller. The Seller may from time to time make changes in the specification to the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality, fitness for purpose or performance of the Goods.

4.2 Although the Seller endeavours to ensure that the information contained in its brochures, catalogues and other advertising, marketing and promotional material is accurate and not misleading, the Seller make no express representation or warranty concerning the Goods unless made or confirmed by an authorised representative of the Seller in writing.

4.3. The Seller shall not be liable for any advice or recommendation given by them to the Buyer as to the storage, application or use of the Goods unless made or confirmed in writing by an authorised representative of the Seller.

4.4 Where any designs and/or specifications have been supplied by the Buyer for manufacture, processing or assembly by or/to the order of the Seller the Buyer warrants that the use of those designs or specifications for the manufacturing processing or assembly shall not infringe on the rights of a third party.

4.5 In the event the specific good is not available as of the date the order is confirmed by written invoice, the Seller reserves their right to supply comparable goods, of similar or better quality.

4.6 The Buyer agrees and acknowledges that all specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's marketing materials are provided for the sole purpose of giving an approximate idea of the goods described in them. The Seller is not bound by such descriptions which do not form a part of these Terms and Conditions, nor are they a part of the sales agreement.

5. Product Delivery

5.1 Any dates quoted by the Seller for delivery of the Goods are approximate only. Time for delivery shall not be of the essence of the contract and the Seller shall not be liable for any failure (howsoever caused) to deliver the Goods promptly or at all.

5.2 If the Seller agrees that delivery of the Goods shall be made other than at the Seller's premises the Buyer shall provide safe and proper access and make all arrangements (including the provision of labour, equipment, storage and other facilities) necessary to take safe unloading and delivery of the Goods whenever they are tendered for delivery.

5.3. Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered subject to a proportionate adjustment in the Price and such quantity delivered shall be deemed to be the quantity ordered.

5.4. The Seller may deliver the Goods by separate instalments in which case each separate instalment shall be invoiced and paid for in accordance with these Conditions as if each separate instalment was the subject of a separate contract. Failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole to be repudiated.

5.5. Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered within 3 months of the date of the Contract or if a delivery date shall have been agreed or quoted by the Seller, within 3 months of such delivery date.

5.6. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

5.6.1. Store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage and insurance;

5.6.2. Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price; or

5.6.3. Charge the Buyer in respect of any losses arising from any delay caused by the acts or omissions of the Buyer.

5.7 The Buyer must inspect all goods upon delivery and advise the Seller of any defects within 2 days of the delivery date or all complaints as to defects are waived.

5.8 Upon reasonable rejection of the goods, the Buyer timely notifying the Seller, the Buyer will be entitled to a refund of funds paid. In the event that any sums are due by the Buyer to the Seller in respect of other invoices issued by the Sellers to the Buyers, the Sellers will be entitled to apply the refund credit against other outstanding charges.

5.9 Risk of loss or damage to the goods passes to the Buyer immediately upon delivery or upon transfer of the beneficial title to the goods.

5.10 Where the Buyer requests that the goods be placed directly in the safe custody of another party on behalf of the Buyer, delivery shall be deemed to take place on the date the goods are transferred into that safe custody.

6. Returns

6.1 The Buyer may return any goods delivered at the Buyers cost within 5 days of receipt, if the goods do not match the description on the delivery note , and by giving written notification of intent to return to the Seller by registered post, confirmed fax or confirmed email. If the Buyer decides to return the goods, the goods must be returned and received by The Seller within 5 days of receipt of confirmed notice of return from the Buyer. If the goods are not received within 5 days of receipt of confirmed notice of return from the Buyer, the sale is deemed final and no returns of the goods will be accepted.

6.2 Once a sale is deemed final, no returns will be accepted and the Buyer hereby accepts and waives any claims he/she may have under Scottish law or otherwise.

6.3 The Buyer is responsible for all delivery costs and insurance costs incurred for returned goods.

6.4 Unless otherwise prohibited by Scottish law, full reimbursement of the purchase price of the goods, less insurance and delivery costs, shall be the Buyer's sole remedy if the goods are returned.

7. Title and risk

7.1. The Goods shall be at the Customer's risk as from the delivery.

7.2. Property in the Goods shall not pass from the Seller until:

7.2.1. The Buyer shall have paid the Price (plus VAT thereon) in full; and

7.2.2. No other sums whatever shall be due from the Buyer to the Seller.

7.3. Until property in the Goods passes to the Buyer in accordance with **Condition 7.2** the Buyer shall hold the Goods and each of them on a fiduciary basis as agent for the Seller.

7.4. Should the Buyer convert the Goods (or any of them) into a new product (whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions) the conversion shall be effected by the Buyer solely as agent for the Seller who shall have the full legal and beneficial ownership of the new products. Where any such conversion shall have been effected references in this **Condition 7** to 'the Goods' shall include references to any new products incorporating the Goods.

7.5. The Buyer shall safely store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property provided that should Goods which are the property of the Sellers be admixed with:

7.5.1. Goods the property of the Buyer, then the Seller shall have the full legal and beneficial ownership of the product thereof; or

7.5.2. Goods the property of any person(s) other than the Buyer (whether or not goods of the Buyer are also included), then the Seller shall have the full legal and beneficial ownership of the product thereof in common with such person(s) other than the Buyer.

7.6. Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell (at full market value for the account of the Seller) or otherwise deal with the Goods in the ordinary course of the Buyer's business. Any such sale or dealing shall be by the Buyer acting as principal on its own behalf who shall be liable for any claims whatsoever and howsoever arising out of any such sale or dealing.

7.7. The Seller shall be entitled to recover the Price (plus VAT) and any other applicable costs notwithstanding that property in any of the Goods has not passed from the Seller.

7.8. Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up to the Seller such of the Goods as have not ceased to be in existence or resold by the Buyer. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of any such request the rights of the Buyer under **Condition 7.6** shall cease.

7.9. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller.

7.10. The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance.

7.11. Without prejudice to the other rights of the Seller, if the Buyer fails to comply with the provisions of **Conditions 7.9** or **7.10** all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

7. Warranties

The Seller makes no warranties, expressed or implied, except as specifically stated herein. Such warranties are in lieu of all other warranties, written or oral, statutory, express or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose. The Seller shall in no event be liable for any incidental, special, or consequential damages of any nature, even if the Seller has been advised of the possibility of such damages. In no event shall the Seller have total liability to the Buyer for all damages, losses and causes of action (whether in contract, tort or otherwise) for the value of the goods and services provided hereunder. The Seller's entire liability under or in connection with the Sales Agreement shall be limited to an amount equivalent

to the purchase price.

8. Termination by the Seller

The Seller may terminate this agreement if the Buyer fails to make payment when due or substantially breaches any other obligation of these Terms and Conditions or the Sales Agreement. The Seller may notify the Buyer in writing of such termination and recover from the Buyer payment for goods ordered or work completed. The Buyer is liable for any and all costs incurred by the Seller in connection with collection of such unpaid funds.

9. Force Majeure

Provision of goods and services supplied to the Buyer covered by the Sales Agreement is contingent upon the non-occurrence of strikes, accidents, delays of carriers, delays of delivery, delay of personnel or other causes unavoidable or beyond the control of the Seller. If performance of the Sales Agreement or any obligation under the Sales Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("force majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party Invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, wars, supplier failures, shortages, breach, or delays. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or special losses, any loss of use, profit, business, revenue or contract or any liability of the Buyer to any third party.

10. Communication

10.1 All notices shall be in writing and sent by registered post, facsimile or email to the address of the Buyer stated in any quotation, sales invoice, order or acknowledgement of order.

10.2 Notices shall be deemed to be received if sent by registered post, on the second day following the day of posting and, if sent by email or facsimile, on day of transmission (if sent before 4:00 pm).

11. General

11.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the contract or not.

11.2 No failure or delay by the Seller to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

11.3 The parties do not intend that any term of these Terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party of it.

12. Disclaimer

12.1 Save as otherwise provided in these Terms, the Seller shall not be liable for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of use; (f) loss or corruption of data or information; or (g) any form of indirect, special or consequential loss whatsoever or howsoever caused.

12.3 The Buyer acknowledges that in entering into the sale agreement, the Buyer has not relied on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether a party to the sale agreement or not) other than as expressly set out or referred to in these Terms and the sale agreement. The Buyer hereby waives all rights and remedies howsoever arising which, but for this Clause, might otherwise be available to the Buyer in respect of any such representation, warranty, undertaking or other assurance.

12.4 Nothing in these Terms is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

13. Data Protection

The Seller will hold any personal information provided to it in confidence and in accordance with the Data Protection Act 1998 and other applicable data protection legislation. The Seller will use such personal information for the administration and servicing of purchase and sales agreements and all other related activities; The Seller may disclose personal information to its agents and service providers and other members of The Seller for this purpose.

14. Copyright and Confidentiality

Copyright, trademarks, database rights and all similar rights and marketing materials are owned by The Seller, its licensors or relevant third party content providers. Such information may not otherwise be reproduced, distributed, stored in a data retrieval system or transmitted in any form or by any means without the prior written permission of The Seller. Nothing in the Seller's marketing materials or on their website or literature should be considered granting any license or right under any trademark of The Seller or any third party.