

Terms & Conditions of Sale 2018

Terms and Conditions of Sale

1. THE COMPANY ('Seller')

We, the 'Seller', means Flooddefences.com, a trading company of Lakeside Flood Solutions Ltd., a company registered in England and Wales under company number 10232357 and with our registered office at Invest House, Bruce Road, Fforestfach Industrial Estate, Swansea, SA5 4HS.

2. ACCEPTANCE

2.1. 'Buyer' means an individual or body corporate entering into a business agreement with Seller or making use of any products, services or facilities, whether on payment or gratis, which seller may choose to offer from time to time.

2.2. All quotations given & all orders are accepted only upon these Conditions to the exclusion of any other terms and conditions including Buyers' terms and conditions of purchase.

2.3. No quotation given is an order of sale capable of acceptance so as to create a binding contract.

2.4. Acceptance of Buyer's orders is subject to supplies and services being available and unsold.

2.5. Buyer acknowledges that in entering into any contract hereunder, it does not rely on any representation or statement concerning the goods unless confirmed in writing by the Seller and waives any claim for breach of any such representation or statements not so confirmed.

2.6. Where order and acceptances are to be communicated via electronic data interchange (EDI) messages any order transmitted to Seller requires its acceptance to be transmitted to Buyer before any contract arises. Each order so accepted will be governed by these Conditions.

3. PRICES

Goods and service in respect thereof will be invoiced at the prices ruling at the date of acceptance of order. Where a fixed price has been agreed with respect to an order, Seller may increase the price before or after acceptance of order, without notice, to the extent that the cost to Seller of producing or procuring the goods or services (if any) has increased or is due to any other circumstances beyond the Seller's control.

4. PAYMENT

4.1. Unless otherwise agreed, prices quoted are exclusive of VAT

4.2. Standard Terms of Payment are 50% deposit payment upfront upon order and date of invoice, followed by 50% upon completion of the works within 30 working days from date of completion. Payment shall be made without any deduction or set-off whatsoever.

4.3. If any payment is overdue Seller reserves the right to:

- I. Suspend any further contracted deliveries to Buyer.
- II. Charge interest for commercial transactions on the amount due according to European Directive 2000/35/EC on Late Payment in Commercial Transactions (from due date of payment to date of actual payment) until the amount due (including interest) is paid.
- III. Charge interest for none commercial transactions on the amount due on a daily basis at 5% pa above the Base Rate of Barclays Bank PLC from time to time applicable until the amount due (including interest) is paid.
- IV. Revoke or reclaim any discounts agreed with or offered to Buyer at time of order.
- V. Seller reserves the right at any time to demand full or partial payment before proceeding further with an order.

5. DELIVERY

5.1. Unless otherwise agreed any delivery date or period specified by Seller is an estimate only and Seller shall not be liable for any loss or damage sustained by Buyer as a result of any delay in delivery.

5.2. Buyer shall accept delivery whenever Seller prefers delivery. If Buyer fails to provide the information to enable delivery to occur or shall otherwise cause or request a delay in delivery of the goods, Buyer shall pay, in addition to the price, all storage, insurance, transportation and other relevant costs incurred as a result thereof including the costs of suspending or cancelling any further contracted deliveries.

5.3. Seller reserves the right to make delivery by installments and these Conditions shall apply with appropriate amendments to each installment delivery. Seller is entitled to tender an invoice for each installment to be paid by buyer.

6. PRODUCT SHORTAGES, DAMAGES AND LOSSES IN TRANSIT

6.1. Any claims by Buyer in relation to goods damaged awaiting transit or in transit (including corrosion thereof), shortage or non-delivery, must be made in writing to Seller and the carrier. In the case of damaged goods or shortage, the claim must be made within 3 days of delivery and in the case of non-delivery of whole consignment, within 3 days of the delivery date specified by the Seller, or failing such date, the date of invoice.

6.2. The goods in respect of which any claim of damage or shortfall is made must be preserved intact (including packing) for a period of 14 days from Seller's receipt of notice of the claim within which time Seller and carrier shall have the right to attend at Buyer's premises to investigate the claim and inspect the goods.

7. RISK AND TITLE

7.1. Risk in the goods shall pass to Buyer on delivery but where delivery is withheld or delayed by reason of any default of Buyer, risk shall pass to Buyer at such time that Seller would have delivered had such withholding or delay not occurred. In the absence of written claim, the goods shall be deemed to have been delivered and accepted by Buyer complete and in satisfactory condition.

7.2. Title to the goods shall remain with the Seller until such time as Seller shall have received payment in cash or cleared funds in full therefore and for all other goods to be agreed to be sold by Seller to Buyer for which payment is then due.

7.3. If Buyer commits any default (which expression shall without prejudice to the generality thereof includes the failure to pay Seller on due date, the appointment of a receiver, or a provisional liquidator, a liquidator or an administrator) the Seller shall be entitled forthwith to recover and resell any or all of such goods and, in addition, all other goods agreed to be sold by Seller. For such purpose Seller shall have an irrevocable licence or authority to enter upon any premises where those goods may be situated with such transport as may be necessary and Buyer shall render all reasonable assistance to Seller to so recover the goods.

7.4. Until such time as title passes to Buyer, Buyer shall store the goods separately from other goods of Buyer and in such manner as they can be clearly identified as the property of the Seller. Seller shall be entitled to inspect such storage from time to time.

8. WARRANTY

8.1. Seller warrants that the goods, at time of delivery, shall be free from any significant defect in material or workmanship for the period of 1 year. If any goods do not conform to that warranty, Seller will, at its option (i) replace the goods found not to conform to that warranty; (ii) take such steps as Seller deems necessary to bring the goods into a state where they are free from such defects; or (iii) take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price PROVIDED THAT the liability of Seller shall in no event exceed the purchase price of the goods and that performance of any one of the above options shall constitute an entire discharge of seller's liability under this warranty.

8.2. The foregoing warranty is conditional upon:

- I. Buyer giving written notice to Seller of the alleged defect within seven days of the time when Buyer discovers or ought to have discovered the defect and in any event within 7 days of delivery of the goods;
- II. Buyer affording the Seller, or its agents, or insurer's agents, a reasonable opportunity to inspect the goods during a period of 14 days and, if so requested by Seller, returning the allegedly defective goods to Seller's works, carriage prepaid (subject to refund in the event that the claim is found to be justified), for inspection to take place there;
- III. The goods having been stored carefully & in accordance with any instructions issued by Seller and so as not to allow deterioration, damage or theft;

IV. Any defects found not being as a result of damage or neglect or misuse or normal wear and tear.

8.3. All information as to the methods of storing, applying or using the goods, the purpose to which the goods may be applied, the suitability of using the goods in any process or in conjunction with any other materials, are given by Seller to its agent in good faith but it is for the Buyer to satisfy itself of the suitability of the goods for any particular purpose.

9. DISCLAIMER & LIABILITY

9.1. In the event that the Seller determines that any product supplied by Seller fails to meet any warranty during the applicable warranty period an opportunity to rectify the situation without damages shall be afforded to the seller for a period of not less than 90 days from date Buyer notifies Seller in writing. In any case if the defect cannot be satisfactorily rectified Seller shall not be liable for any damages or costs or loss in excess of the amount paid by Buyer for that particular product or service.

9.2. Seller makes no warranty expressed or implied that the products or services supplied will provide absolute flood protection for the property or premises beyond the extent or confines of the product itself and within the limits defined by DIN19569-4:1995. In the event of flooding occurring within the confines of the product caused by faulty workmanship and that correct installation and erection of the product (in accordance with Seller's written or verbal instruction) has been performed, the Seller's liability will be limited to the cost of replacing faulty product or component.

9.3. In any event or circumstance in which the product fails howsoever caused or arising, Seller's liability to Buyer shall be limited to the price of goods supplied by Seller.

10. DAMAGES

10.1. Seller shall not be liable in contract or tort or delict or otherwise for any loss or damage whether consequential or indirect loss or damage or otherwise howsoever caused.

10.2. In any event Seller's liability to Buyer in respect of any breach or non-performance of Seller's obligations howsoever caused or arising shall be limited to the price of the goods.

10.3. Nothing herein shall affect the liability of Seller for death or personal injury caused by Seller's negligence.

11. FORCE MAJEURE

11.1. Seller shall not be liable for any loss or damage if Seller shall be prevented from or hindered in or delayed in performing its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's reasonable control including, but not limited to, an act of God; severe weather; war (whether declared or not); civil disturbance; requisitioning; governmental or other authority's regulations, restrictions or enactments of any kind; import or export regulation; strike, lock-out or trade dispute (whether involving its own employees or those of any other person); power or machinery breakdown, accident, non-availability or delay of vessels or other transport. Should any such event occur, Seller shall confirm the same in writing to Buyer and Seller may cancel or initially suspend then, if necessary, cancel the performance of the contract without incurring any liability for any loss or damage thereby occasioned.

12. TEST AND INSPECTIONS

12.1. Unless otherwise agreed, all testing and inspection specified by the buyer, implied by the order, or customary to Seller's practice, shall be at Seller's works and shall be final. Seller reserves the right to make a reasonable charge therefore.

13. ALTERATION IN SPECIFICATION

13.1. Seller reserves the right to make any alteration in specification of the goods which do not materially alter their quality or performance, or where specification is to conform to any applicable safety or other statutory requirements. If Buyer requires any further information or advice on safe use of the goods in question, Buyer shall forthwith contact the Seller.

14. INDEMNITY

14.1. Where Buyer provides drawings, specifications, information or data to Seller for the purposes of any order, Buyer shall indemnify Seller against any and all claims, damages, loss, costs and expenses for which Seller may become liable as a result of the infringement of any patent, copyright, design right or other intellectual property of any third party.

14.2. Buyer shall indemnify Seller against any and all claims, damages, loss, costs and expenses suffered or incurred by Seller as a result of any claim by a third party arising out of, or in connection with, the sale of goods including any claim under the Consumer Protection Act 1987.

14.3. Buyer shall be responsible for effecting and maintaining insurance cover as appropriate in particular in respect of Condition 13(a) and (b) and, upon request, shall provide a copy of the insurance policy and evidence of premiums paid in respect thereof.

15. CANCELLATION

15.1. No order which has been accepted by Seller may be cancelled by Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify inter alia the Seller in full including, but not limited to, for and against all loss or damage (whether consequential or indirect loss or damage or otherwise), costs (including those of labour and materials used), damages, charges (including forward currency exchange) and expenses incurred by Seller as a result of cancellation.

16. BREACH

16.1. Seller shall be entitled by notice in writing to terminate any contract with Buyer and without any liability whatsoever to the Buyer if any of the following apply:

- I. Buyer shall commit any breach or default whether material or otherwise of its obligation to the Seller in terms of any contract with the Seller.
- II. Any distress or execution shall be levied on, or any diligence in Scotland be executed against Buyer or any of its assets.
- III. Buyer makes or attempts to make any arrangement or composition with its creditors.
- IV. Where Buyer is a public or private limited company, any resolution is passed or Petition presented to wind up its business (except for the purpose of reconstruction or amalgamation) or a receiver or administrator or liquidator or a provisional liquidator is appointed of Buyer or of any of its undertakings, property or assets or any part thereof or Buyer ceases, or threatens to cease, business.
- V. Where Buyer is an individual, a partnership including a dissolved partnership, a corporation or local authority, or an unincorporated body, Buyer or any partner or any member thereof signs a Trust Deed for the behoof of its creditors or is subject to a Petition for Bankruptcy or becomes apparently insolvent.

In the event of termination in terms hereof, Buyer shall become liable for immediate payment for all goods delivered, manufacturing commenced & services provided by seller at date of termination.

17. ASSIGNMENT AND SEVERABILITY

17.1. Buyer shall not assign or transfer, or purport to assign or transfer, any contract to which these Conditions apply without the Seller's prior written consent.

17.2. If any provision or term of these Conditions is, or shall become or be declared to be, illegal, invalid or unenforceable in whole or in part by any Court or other authority having jurisdiction over the parties hereto, the same shall be divisible from this agreement in the jurisdiction in question to the extent (but not greater than) necessitated by the Court or other authority.

18. WAIVER AND AMENDMENT

18.1. No failure or delay on the part of Seller to exercise any right or remedy under any contract governed by these Conditions (whether a single or partial or further exercise) shall be construed or operated as a waiver thereof. The rights and remedies provided are cumulative and are not exclusive of any rights or remedies provided by law.

18.2. These Conditions shall not be amended, modified or varied except in writing signed by Seller.

19. NOTICES

19.1. Any notices to be given shall be in writing and be deemed to be given if left at the last known address of Seller or as the case may be, the Buyer (marked for attention of Company Secretary or the individual(s) carrying on the business, as appropriate) or sent to same by first class post, or 6hrs after a receipt of a transmission in legible form if by telex or facsimile, or after delivery, if by hand.

20. GOVERNING LAW

20.1. Buyer submits to the jurisdiction of English Law. In any case where the Buyer is domiciled outwith the United Kingdom, and has no place of business within the United Kingdom, and performance of the contract is entirely outwith the United Kingdom, then the construction, validity and performance of these Conditions shall be governed by the law of England and the Buyer submits to the exclusive jurisdiction of the courts of England.

21. EXPORT CONTRACTS

20.1. The following additional provisions will apply to any order for the sale of goods when goods are exported outside the United Kingdom:

- I. Buyer shall be solely responsible for the obtaining of any necessary import licences or authorisations in respect of the goods and Seller shall be under no liability whatsoever in respect of goods exported without the necessary licences.
- II. Where goods sold FOB or CFR (formerly C&F) Seller shall be under no obligation to give Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.
- III. Incoterms('90) shall apply except & to the extent that they be inconsistent with these Conditions.
- IV. All claims for damage or loss incurred awaiting, or in, transit must be made in accordance with the instructions of Seller's insurance company, details of which are given on the insurance certificate with the applicable shipping documentation.

22. RETENTION OF TITLE

22.1 We reserve the right as a supplier of goods, as outlined under the Sale of Goods Act 1979, that we retain the right to ownership of all goods even when delivered to the purchaser until payment has been made in full for the goods.