

Terms and Conditions of Sale (United Kingdom)

1. Preliminary

- 1.1. Subject to condition 1.4 these Conditions of Sale apply in respect of all offers to sell, quotations, Contracts of Sale and other commercial transactions for the supply of Product by Centor.
- 1.2. These Conditions of Sale shall be coexistent with and be read in conjunction with any Special Conditions of Sale except where the latter specifically vary or override these Conditions of Sale or any of them.
- 1.3. Subject to condition 1.4 these Conditions of Sale will apply notwithstanding any provisions to the contrary which may appear on the purchase order, confirmation of order or other documents issued by the Customer.
- 1.4. These conditions will not be waived unless variations to the conditions of sale are agreed by the General Manager of Centor in writing.
- 1.5. Each order or acceptance of a quotation for Product will be deemed to be an offer by the Customer to purchase Product upon these Conditions of Sale.
- 1.6. The Contract of Sale is formed when the order is accepted by Centor, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by Centor.

2. Quotations

- 2.1. Unless previously withdrawn a quotation is valid for:
- 2.1.1. thirty (30) days from its date or;
- 2.1.2. such other period as is stated therein;
- and is subject to;
- 2.1.3. withdrawal; or
- 2.1.4. change;
- at any time until the Purchaser's order has been received and accepted by Centor.
- 2.2. Unless otherwise stated, all prices quoted by Centor are exclusive of VAT.
- 2.3. Acceptance of delivery of the Product will be deemed conclusive evidence of the Customer's acceptance of these Conditions of Sale.

3. Publications

- 3.1. Unless otherwise stated in writing all specifications, drawings and particulars of weights, dimensions and performance characteristics submitted are approximate only and descriptions and illustrations contained in catalogues, price lists and other written material are intended merely to present a general idea of the Product described therein and none of these shall form part of the Conditions of Sale.
- 3.2. Centor may make any changes to the specification, design, materials or finishes of the Product which:
- 3.2.1. are required to conform with any applicable safety or other statutory or regulatory requirements; or
- 3.2.2. do not materially affect their quality or performance.
- 3.3. The Customer acknowledges that it has not made known to Centor expressly or impliedly any particular purpose for which it has acquired the Product.

4. Warranty, Exclusion of Liability and Indemnity

- 4.1. Centor will, free of charge, within a period of 12 months from the date of delivery of Products which are proved to the reasonable satisfaction of Centor to not comply with the specification due to defects in material, or

workmanship or design (other than a design made, furnished or specified by the Customer) at its option repair, replace, or refund the price paid for such Products. This obligation will not apply where:

- 4.1.1. the Products have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 4.1.2. the Products have been improperly installed or connected;
- 4.1.3. any maintenance requirements relating to the Products have not been complied with;
- 4.1.4. any instructions as to storage of the Products have not been complied with in all respects; or
- 4.1.5. the Customer has failed to notify Centor of any defect or suspected defect within 10 days of the delivery where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than [12 months] from the date of delivery.

4.1.6. Where the customer has substituted a Centor product for an alternative product which is used in conjunction with Centor's products.

- 4.2. Any Products which have been replaced will belong to Centor. Any repaired or replacement Products will be liable to repair or replacement under the terms specified in condition 4.1 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Products.
- 4.3. The Customer must not carry out any remedial work to alleged defective Product without first obtaining the written consent of Centor to do so. Any unauthorised work will invalidate any warranty on the Product.
- 4.4. Centor does not exclude its liability (if any) to the Customer:
- 4.4.1. for breaches of Centor's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
- 4.4.2. for death or personal injury resulting from Centor's negligence;
- 4.4.3. under section 2 (3) of the Consumer Protection Act 1987;
- 4.4.4. for any matter which it would be illegal for Centor to exclude or attempt to exclude its liability; or
- 4.4.5. for fraud.

4.5. Except as provided in conditions 4.1, 4.4 and 7.4 Centor will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:

- 4.5.1. any of the Products, or the manufacture or sale or supply, or failure or delay in supply, of the Product by Centor or on the part of Centor's employees, agents, or sub-contractors;
- 4.5.2. any breach by Centor or any of the express or implied terms of the Contract of Sale;
- 4.5.3. any use made or resale by the Customer of any of the Products, or of any product incorporating the Products;
- 4.5.4. any statement made or not made, or advice given or not given by or on behalf of Centor;
- 4.5.5. or otherwise under the Contract of Sale.

4.6. Subject to condition 7.4 the Customer taking delivery of the Product will constitute a waiver of any claim for delay.

4.7. The limitation of liability of Centor in this condition will apply regardless of the form of action.

4.8. The limitation provisions in this condition are subject to and shall not derogate from any mandatory legal provisions to the contrary.

4.9. Centor shall have no liability to the Customer for any proceedings brought against Centor which have not been commenced within six (6) months from when the cause of action arose.

4.10. Each of Centor's employees, affiliated companies, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in condition 4 in that person's own name and for that person's own benefit, as if the words "its employees, affiliated companies, agents and sub-contractors" followed the word Centor wherever it appears in those conditions save each reference in condition 4.5.1.

4.11. The Customer agrees to indemnify, keep indemnified and hold harmless Centor from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which Centor incurs or suffers as a consequence of any breach whatsoever or negligent performance or failure in performance by the Customer of the Conditions of Sale.

4.12. Except as provided in conditions 4.1 and 4.4 above the Customer expressly acknowledges and agrees that Centor is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of Product supplied by Centor and all such advice relied upon is at the Customer's risk.

4.13. To the extent permissible by law, all conditions, stipulations and warranties by Centor express (other than set out in the Conditions of Sale) or which might be implied (whether by statute, custom or otherwise) which, but for this extension, would or might subsist in favour of the Customer, are excluded.

4.14. The Uniform Laws on International Sales Act 1967 is expressly excluded.

5. Representations

5.1. The Customer agrees that any representations upon which the Customer relies in entering into the Contract of Sale (a Representation) will be reduced to writing and included in the Contract of Sale documented as Special Conditions.

5.2. Subject to condition 4.4 the validity, accuracy or otherwise of a Representation not reduced to writing and included in the Conditions of Sale is disclaimed by Centor.

5.3. Subject to condition 4.4 the Customer releases Centor from any liability howsoever arising in relation to any representation not reduced to writing and included in the Contract of Sale documentation.

5.4. The Customer must ensure that the terms of its order and any applicable specification are complete and accurate and fit for the Customer's purpose.

6. Acceptance and Return of Product

6.1. The Customer will be responsible for immediate inspection of the Product after arrival at the place of delivery.

6.2. The Customer shall be deemed to have accepted the Product to be of the description, quality and quantity ordered unless particulars of any claim are notified to Centor in writing within timescales set out in condition 4.1.5.

6.3. Centor will not accept return of Product unless such return is authorised by Centor. A re-stocking fee may be charged to the Customer where applicable.

6.4. Subject to condition 4.1 Products that are specially, finished, manufactured, machined or cut to size at the request of the Customer are not returnable.

7. Delivery, Transportation Costs, Risk and Insurance

7.1. Unless otherwise agreed in writing, delivery of the Products will be Ex Works (Incoterms 2000) at Centor's warehouse at Unit 6, Elmdon Trading Estate, Bickenhill Lane, Birmingham, B37 7HE, United Kingdom. which includes without limitation that:

7.1.1. the Customer is liable for all transportation costs.

7.1.2. risk in the Product supplied to the Customer will pass to the Customer upon delivery of the Product to the Customer.

7.1.3. Centor accepts no responsibility for loss, damage or delay in transit beyond the point of delivery.

7.1.4. the Customer is liable for all insurance costs on the Product after it has been delivered to the point of delivery.

7.2. The Customer will take delivery of the Product within 10 days of Centor giving it notice that the Products are ready for delivery.

7.3. Delivery of the Product will be made during Centor's usual business hours.

7.4. Centor will use reasonable endeavours to deliver each of the Customer's orders for the Products within the time agreed when the Customer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, Centor is unable for any reason to fulfil any delivery or performance on the specified date, Centor will be deemed not to be in breach of this Contract of Sale, nor (for the avoidance of doubt) will Centor have any liability to the Customer for direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle the Customer to cancel the order unless and until the Customer has given 10 days' written notice to Centor requiring the delivery to be made and Centor has not fulfilled the delivery within that period. If the Customer cancels the order in accordance with this condition 7.4 then:

7.4.1. Centor will refund to the Customer any sums which the Customer has paid to Centor in respect of that order which has been cancelled; and

7.4.2. the Customer will be under no liability to make any payments under condition 15.1 in respect of that order which has been cancelled.

7.5. The Customer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Product.

7.6. If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered on time (except solely on account of Centor's default), the Product will be deemed to have been delivered on the due date and (without prejudice to its other rights) Centor may:

7.6.1. store or arrange for storage of the Product until actual delivery or sale in accordance with condition 7.6.2 and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or

7.6.2. following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract of Sale or account to the Customer for any excess achieved over the price under the Contract of Sale, in both cases having taken into account any charges related to the sale.

7.7. Risk of damage to or loss of the Product will pass to the Customer on delivery as defined in condition 7.1 (or deemed delivery in accordance with condition 7.6).

8. Instalments

8.1. Centor may deliver the Product by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract of Sale.

8.2. Each instalment will be a separate Contract of Sale and no cancellation or termination of any one Contract of Sale relating to an instalment will entitle the Customer to repudiate or cancel any other Contract of Sale, instalment.

9. Interest

9.1. The granting of credit to the Customer shall be at the absolute discretion of Centor.

9.2. If any sum payable under the Contract of Sale is not paid when due then, without prejudice to Centor's other rights under the Contract of Sale, that sum will bear interest (calculated on a daily basis) from the due date until payment is made in full, both before and after any judgment, at 5% per annum over HSBC Bank plc UK base rate from time to time and Centor will be entitled to suspend deliveries of the Product until the outstanding amount has been received by Centor from the Customer.

9.3. Payment will be credited first against interest accrued.

10. Cancellation after Default

10.1. Centor at its option may without prejudice to any other rights or remedies open to it by notice in writing served on the Customer, terminate this Contract of Sale and/or any or all other contracts of sale with the Customer immediately if the Customer:

10.1.1. dies or is incapacitated;

10.1.2. becomes bankrupt, insolvent, is subject to liquidation, enters into any composition with its creditors, fails to make any payment or to meet any invoice under this or any other contract or obligation to Centor, has a receiver appointed in respect of its business or affairs, has any distraint, execution or other process levied or enforced on any of its property, or ceases to trade or appears in the reasonable opinion of Centor likely or is threatening to cease to trade;

10.1.3. is in material breach of any of the terms of the Contract of Sale and, where the breach is capable of remedy, the Customer fails to remedy such breach within 14 days service of a written notice from Centor, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with condition 15 is a material breach of the terms of the Contract of Sale which is not capable of remedy;

10.1.4. the equivalent of any of the above occurs to the Customer under the jurisdiction to which the Customer is subject; or

10.1.5. Centor reasonably anticipates that one of the above set of circumstances is about to occur.

10.2. The termination of the Contract of Sale howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or Centor accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

10.3. Centor will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under condition 10.1.3, until either the breach is remedied or the Contract of Sale terminates, whichever occurs first.

11. Currency

11.1. All quotations and all payments made for Product must be in the currency set out in Centor's acknowledgement of order, which shall either be in Pounds Sterling or Euros or US\$.

12. Intellectual Property

12.1. No right or licence is granted to the Customer in respect of the Intellectual Property Rights of Centor, except the right to use, or re-sell the Products in the Customer's ordinary course of business.

12.2. The Customer will not without Centor's prior consent allow any trade marks of Centor or other words or marks applied to the Products to be obliterated, obscured or omitted nor add any additional marks or words.

12.3. All drawings, illustrations, specifications and other literature and materials for or relating to the Product and whether or not supplied by or on behalf of Centor to the Customer shall remain the exclusive property of Centor and shall not be transferred to any other party without the previous written consent of Centor.

12.4. The Customer shall not use, reproduce or impart any information contained therein to any third party without the previous written consent of Centor except for the purpose of implementing the Contract of Sale in respect of which they are supplied and except in the case of standard descriptive illustrations, drawings or specifications, they are to be returned to Centor either on completion of the Contract of Sale or earlier, at Centor's request;

12.5. Where Centor has followed a design, sample or instruction furnished or given by the Customer, the Customer shall indemnify Centor against all damages, penalties, costs and expenses to which it may become liable through any work required to be done in accordance with those instructions involving an infringement of a patent, trademark, registered design, copyright or common law right.

12.6. The Customer will indemnify Centor against any loss suffered by Centor as a result of the Customer breaching its obligations under this condition.

13. Property in Product

13.1. Title in Product sold by Centor to the Customer does not pass to the Customer until Centor is fully paid in cleared funds for:

13.1.1. that Product; and

13.1.2. all other sums which are or which become due to the Company from the Customer on any account.

13.2. Until the title in the Product passes the Customer is required to:

13.2.1. hold the Products on a fiduciary basis as Centor's bailee;

13.2.2. store the said Product (at no cost to Centor) in such a way that it is clearly the property of Centor;

13.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Product; and

13.2.4. maintain the Product in satisfactory condition insured on Centor's behalf for their full price against all risks.

13.3. Should the Customer default in payment Centor may enter the Customer's premises and retake possession of and permanently retain any Product .

13.4. The Customer may resell the Products before ownership has passed to it solely on the following conditions:

13.4.1. any sale will be effected in the ordinary course of the Customer's business at full market value and the Customer will account to Centor accordingly; and

13.4.2. any such sale will be a sale of Centor's property on the Customer's own behalf and the Customer will deal as principal when making such a sale.

13.5. The Customer's right to possession of the Products will terminate immediately if any of the circumstances set out in condition 10 occur.

13.6. Centor will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Centor.

13.7. Where Centor is unable to determine whether any Products are the products in respect of which the Customer's right to possession has terminated, the Customer will be deemed to have sold all products of the kind sold by Centor to the Customer in the order in which they were invoiced to the Customer.

13.8. On termination of the Contract, howsoever caused, Centor's (but not the Customer's) rights contained in this condition 13 will remain in effect.

14. Right of Removal

14.1. The Customer irrevocably grants to Centor its agents and servants an unrestricted right and licence, without notice, to enter premises occupied by the Customer to identify and remove any of the Product the property of Centor without in any way being liable to the Customer or any person claiming through the Customer.

14.2. Centor shall have the right to sell or dispose of any of such Product so removed or otherwise in its sole discretion and shall not be responsible for any loss occasioned thereby.

15. Payment

15.1. Centor may invoice the Customer for the Product on or at any time after delivery and payment for any Product sold shall become due and payable on the earlier of:

15.1.1. from the date stipulated on the invoice

15.1.2. immediately upon default by the Customer in payment for any other product which Centor has sold to the Customer (at which time Centor shall be entitled to suspend the supply of further Product to the Customer).

15.2. Time for payment will be of the essence.

15.3. No payment will be deemed to have been received until Centor has received cleared funds.

15.4. All sums payable to Centor under the Contract will become due immediately upon termination of the Contract of Sale.

15.5. All payments to be made by the Customer under the Contract of Sale will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.

15.6. Centor may appropriate any payment made by the Customer to Centor to such of the invoices for the Products as Centor thinks fit, despite any purported appropriation by the Customer.

16. Price List

16.1. Any price list published by Centor may be changed or altered by Centor at any time without notice to the Customer and thereafter Centor shall not be bound by the price list so altered.

16.2. A price list published by Centor does not amount to an offer to sell the Product therein mentioned.

16.3. The price for the Product will be the price set out in Centor's confirmation of order and is exclusive of: carriage of the Product; and any value added tax or other applicable sales tax or duty which will be added to the sum in question. Delivery charges and packaging charges will be shown in confirmation of order

16.4. The cost of any pallets and returnable packaging or containers will be paid for by the Customer in addition to the price for the Products [when it is due to pay for the Products].

16.5. Centor will be entitled to increase the price of the Product following any changes in the specification made both at the request of Customer and agreed by Centor or to cover any extra expense as a result of the Customer's instructions or lack of instructions, or to comply with the requirements referred to in condition 3.2.

17. Submission to Jurisdiction

17.1. These conditions and the Contract of Sale shall be governed by and construed in all respects in accordance with the law for the time in force in England.

17.2. Any proceedings against Centor shall be heard and determined by a Court of competent jurisdiction in England and such Court shall possess territorial jurisdiction to determine any such proceeding.

17.3. The Contract of Sale is deemed to be made by the parties in England.

17.4. Centor shall, however, have the right to institute proceedings in any competent jurisdiction against the Customer.

18. Force Majeure

18.1. If by reason of Force Majeure, Centor is unable to perform in whole or in part any obligation under this agreement, Centor is relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and is not liable to the Customer in respect of such inability.

19. General

19.1. Each right or remedy of Centor under any Contract of Sale is without prejudice to any other right or remedy of Centor under this or any other contract.

19.2. If any condition or part of the Contract of Sale is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract of Sale and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract of Sale and this will not affect any other provisions of the Contract of Sale which will remain in full force and effect.

19.3. No failure or delay by Centor 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 some other right, power or remedy.

19.4. Centor may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract of Sale.

19.5. Save as set out in condition 4.10 and in relation to Centor's affiliated companies, the parties to the Contract of Sale do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

19.6. The Contract of Sale contains all the terms which Centor and the Customer have agreed in relation to the Products and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Products. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Centor which is not set out in the Contract of Sale. Nothing in this condition 19.6 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

20. Definitions

20.1. In these Conditions of Sale:

20.2. Centor means Centor Europe Ltd and all employees, agents, consultants and contractors of Centor Europe Ltd.

20.3. Conditions of Sale means the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Customer and Centor pursuant to condition 1.4.

20.4. Contract of Sale means any contract between Centor and the Customer in relation to Product formed in accordance with conditions 1 and 20.

20.5. Customer means any person, firm or company who is the other party to a contract for the purchase of Product from Centor.

20.6. Delivery Point means the place where delivery of the Product is to take place pursuant to condition 7.1.

20.7. Force Majeure means any cause preventing Centor from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Centor including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of Centor or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, shortages in raw materials, or default of suppliers or subcontractors.

20.8. Intellectual Property means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.

20.9. Product means any product or services supplied or to be supplied by Centor to the Customer (including any of them or any part of them) under a Contract of Sale.

20.10. Special Conditions of Sale means any other conditions accepted by Centor on its acknowledgement of order.

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