

**BIM UNITED KINGDOM LTD**  
Standard Conditions of Sale

Our Products are sold and supplied on the following terms:

Except as otherwise expressly agreed in writing signed by one of our directors, we sell goods only upon these terms which shall prevail over any conflicting terms or stipulations contained in any document by the customers.

**1. PRICES**

- a. All prices are delivered prices and are exclusive of VAT. Any VAT chargeable on the Goods will be charged to the Customer
- b. The Customer shall pay our reasonable extra costs (including a reasonable element of profit) in respect of any special arrangement made at the customer's request in order to expedite delivery
- c. Payment is due within 30 days date of invoice
- d. The Customer shall pay us interest on any overdue account at the rate of 2% per month whether or not we have entered judgment for the debt

**2. SET OFF**

The Customer shall not be entitled to set-off any claim against payment of amounts owing to us

**3. RETENTION OF TITLE AND RISK**

- a. The risk in the goods shall pass to the Customer and the Order shall be completed:-
  - (i) Where we have agreed to arrange transport when the goods are delivered ready for unloading at the agreed destination
  - (ii) Where delivery is by carrier when the carrier takes possession of the goods
- b. Notwithstanding delivery and the passing of risk the property in the goods shall remain in us (BIM United Kingdom Ltd – "the Company") until the full price for the goods has been received by the Company in cash or cleared funds
- c. Until such time as the property in the goods passes to the Customer the Customer shall act as commission agent were resale of the goods is specie is anticipated but otherwise the Customer shall act as the Company's fiduciary bailee and agent. The Customer shall keep the goods separate from those of the Customer and third parties and properly stored protected and insured and identified as the company's property. Until that time and in the capacity on behalf of the Company as already described but as principal in relation to the Customer shall be entitled to resell or use the goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any money or properties of the Customer and third parties and in the case of tangible proceeds properly stored protected and insure. The Company shall be entitled to take direct action against a buyer from the Customer for the recovery of the proceeds of any such sale of goods.
- d. 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.
- e. At any time when the price for the goods or part thereof remains unpaid the Company shall (provided the goods are still in existence and have not been resold) be entitled to call upon the Customer to return the goods and upon request the Customer shall permit the Company by its servants or agents to enter upon the premises of the Customer or any third party where the goods are stored and recover the goods for its own use. The customer or third party shall not be entitled to make any claim against the company in respect of such entry or recovery. This right of the Company shall operate at all times and in particular when the Customer is unable to pay its debts within the meaning of Section 518 of the Companies Act 1985 or any statutory modifications or re-enactment thereof and right shall continue if the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession or a receiver is appointed or any of the property or assets of the Customer or the Customer ceases or threatens to cease to carry on business or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly and this Condition and Conditions of Sale shall be binding upon any such Official Receiver or Liquidator or other part in whom the assets of the Customer shall from time to time become vested

**4. RETURNABLE CONTAINERS**

Where we supply the goods in polytainers or other returnable containers the Customer shall pay us for lost or damaged containers at replacement price plus any applicable VAT. Property in the containers shall pass to the Customer when and only when any invoice relating to such containers is paid in full.

**5. QUALITY AND FITNESS FOR PURPOSE**

- a. Our Sales and Technical staff are available to advise purchasers on how to obtain the best results with our products but we do not accept any liability or responsibility for the results, nor do we warrant that any product of ours is suitable for any particular purpose even though it may be.
- b. Each of our standard products is formulated for a range of applications and conditions of use, details of which will be supplied on request. Information is available from our product manuals and data sheets and from our technical department and salesmen to assist the Customer in making a selection. However, such information is not generally sufficient to ensure the suitability of a particular product for a particular application and the Customer shall be responsible for satisfying himself before placing any order that the product is fit for the purpose it is to be applied and used. We recommend a production trial in all cases.
- c. Where we recommend a standard product or assist in the formulation of a special product to meet the Customer's specific requirements, we shall,
  - (i) exercise reasonable skill and care in making recommendations and formulations based upon the information supplied and any laboratory testing or trial undertaken and
  - (ii) supply products conforming within reasonable tolerances with such recommendations and formulations, but we shall not be further responsible for providing a product fit for the Customer's purposes and the Customer shall bear the risk that the products as recommended or formulated prove unsuitable under the actual conditions of production, use or storage the Customer recognising that we have no control over the manufacture of articles in or to which our products may be used or applied or over the conditions under which our product may be used.
- d. Before using the goods delivered to him the Customer shall take reasonable steps by way of checking labels or containers and inspection or testing of the goods to ensure that they conform with the contract and are fit for the purpose for which they are required.
- e. Any claim by the Customer which is based on any alleged defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (were the effect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure if delivery was not refused, and the Customer does not notify the Company accordingly, the customer shall not be entitled to reject the goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the goods had been delivered in accordance with the Contract.
- f. Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the Company in accordance with these Conditions then where possible the Company shall afford us an opportunity to inspect the goods before they or any other product into which they have been incorporated has been further consumed processed treated or otherwise dealt with. The Company shall be entitled to replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- g. Except in respect of death or personal injury caused by the company's negligence, 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 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.
- h. We shall not in any event be liable in respect of any loss or damage which would not have occurred if the Customer had taken reasonable steps to ensure that the goods we supplied conformed with the contract and were fit for any purpose for which they were intended.
- i. Nothing in this clause shall give the Customer the right to return the goods without consent.

**6. INFRINGEMENT**

The Customer shall indemnify us against all liability (including the cost of defending unsuccessful actions) arising as a result of our doing work or supplying goods in accordance with the Customer's specification instructions or design and which infringes or is alleged to infringe any patent, registered design, trademark, copyright or other intellectual property rights of any third party.

**7. DELIVERY**

- a. Whilst every effort is made to adhere to delivery dates, any time or date given by the Company is intended as an estimate only and the Company shall not be liable for any damages or losses direct, indirect or consequential upon delay and the Company makes no representation that delivery of the goods shall be made by a certain date or at all.
- b. Deliveries may be wholly or partially suspended and the time of such suspension added to the original Contract in the event of a stoppage delay or interruption of work in the Company's establishment during the delivery period as a result of any cause beyond the reasonable control of the Company. The company shall be entitled at any such time on notice to the Customer to make partial deliveries, only or to determine the Contract without prejudice in any case to rights accrued in respect of deliveries already made. The Customer shall pay for the part of goods delivered the same proportion of the price as the part delivered bears to the whole of the goods agreed to be sold.
- c. Delivery shall be taken by the Customer within the period (if any) named in the quotation (extended in accordance with paragraph b of this Condition) or within 7 days of notification by the Company that the goods are ready for delivery. If the Customer is unable or fails to accept delivery of the goods at the time when the goods are due and ready for delivery the Company shall if its storage facilities permit store the goods and take all reasonable steps to prevent their deterioration until their actual delivery and the Customer shall be liable to the Company for the cost of storage at the rate of 1% per month of the price of the goods in question plus the actual cost of insurance of its so doing. This provision shall be in addition to and not in substitution for any other payment or damages for which the Customer may become liable in respect of its failure to take delivery at the appropriate date.

**8. DAMAGE IN TRANSIT**

- No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless in the case of damage in transit or shortage of delivery a separate notice in writing is given to the carrier concerned and to the company with 3 days of the receipt of the goods followed by a complete claim in writing within 14 days of receipt of goods and, in the case of loss of goods notice in writing is given to the carrier concerned and the Company.
- (i) Where the goods are to be delivered by Air and /or Rail and Water – within 21 days from the date of despatch by us
  - (ii) Where the goods are to be delivered by Road – within 7 days of the date of despatch by us

**9. INSOLVENCY OF CUSTOMER**

- a. This clause applies if:
  - (i) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or
  - (ii) an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Customer or
  - (iii) the Customer ceases, or threatens to cease, to carry on business or
  - (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly
- b. If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

**10. FROST**

Many of our products are susceptible to damage by frost and we do not accept any responsibility if such damage occurs on the Customer's premises. In frosty weather we shall use our discretion as to whether or not to despatch goods. If the Customer insists on delivery during adverse weather conditions then no liability shall fall upon the Company.

**11. SAFETY & HEALTH**

- The Customer accepts his obligations to ensure:
- (i) that his employees or agents are given any instructions as to safe handling issued by the Company
  - (ii) that any safety precautions recommended therein are taken and
  - (iii) having regard to the nature of the goods, any other necessary steps are taken to ensure that health and safety of persons working with or in the vicinity of the goods

**12. EXPORT TERMS**

- a. In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- b. Where the goods are supplied for export from Great Britain, the provisions of this clause 12 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provisions of these Conditions
- c. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.
- d. Unless otherwise agreed in writing between the Customer and the Company, the goods shall be delivered f.o.b. the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- e. The customer shall be responsible for arranging for testing and inspection of the goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.
- f. Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a London clearing bank acceptable to the Company or, if the Company has agreed in writing on or before acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Company at such branch of Barclays Bank plc in England as may be specified in the bill of exchange.

**13. GENERAL**

- a. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- b. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- c. 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.

**14. ARBITRATION**

- a. All disputes, differences or questions at any time arising between the parties as to the construction of the Contract or as to any matter or thing arising out of the Contract or in any way connected therewith, shall be referred to the arbitration of a single arbitrator who shall be agreed between the parties of who failing such agreement shall be appointed at the request of either party by the President for the time being of the Law Society. The arbitration shall be in accordance with Arbitration Act 1979 and any statutory modification or re-enactment thereof for the time being in force.
- b. Work under the Contract shall so far as may be reasonably practicable continue during arbitration proceedings and no payments which may or shall become due shall be withheld on account of such proceedings.

**15. LEGAL CONSTRUCTION**

This Contract is or shall be deemed to be made in England and shall be construed according to English Law and the Customer hereby submits to the jurisdiction of the English Courts.