

BRC

A division of BRC Limited

CONDITIONS OF SUPPLY

1. Interpretation

1.1 In these Conditions:

“Buyer” means the party which accepts a quotation given to it by the Seller for the sale of the Goods.

“Conditions” means the standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“Contract” means the contract for the sale and purchase of the Goods.

“Goods” means the goods set out in the Quotation (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions.

“Order Confirmation” means confirmation given by the Seller to the Buyer that the Seller agrees to supply an order of the Buyer on these Conditions.

“Price” means the price of the Goods.

“Quotation” means a quotation given by the Seller to the Buyer on the basis of these Conditions.

“Seller” means BRC Limited of Edstone Hall, Wootton Wawen, Solihull, B95 6DD. Registered in England No. 3721267.

“Specification” includes any plans, drawing, data, formulae, instructions or other information relating to the Goods.

“Writing” includes facsimile transmission and comparable means of communication.

1.2 Any reference in the Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of Purchase

2.1 The Quotation shall constitute an invitation to treat by the Seller.

2.2 An order submitted by the Buyer shall constitute an offer by the Buyer to purchase the Goods subject to these Conditions.

2.3 No order shall be accepted or deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative by way of Order Confirmation.

2.4 All quotations made by the Seller in respect of material ex-stock are subject to the material being in stock at the time the Buyer's order is received and the Seller accepts no liability should such material be sold before the Buyer's order is received.

2.5 The Seller shall supply and the Buyer shall acquire the Goods in accordance with the Seller's Order Confirmation subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.6 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.7 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges and agrees that it does not rely on any such representations which are not so confirmed.

2.8 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, Order Confirmation, invoice or other documentation or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.10 The Buyer shall be responsible for the efficacy or otherwise of any information, advice or instructions regarding the Goods given by the Buyer or attached to the Goods and the Buyer shall be liable for and shall indemnify the Seller against all losses, damages, costs and expenses incurred by the Seller or awarded against the Seller in connection with or arising from such information, advice or instructions.

2.11 Where the Contract provides for testing and inspection of the goods before delivery, the Buyer may carry out testing and/or inspection of the Goods at its own expense and at the Seller's producing works within 7 days of notification by the Seller to the Buyer that the Goods are ready for delivery. The Buyer shall pay for all test pieces which comply with the Specification.

2.12 At the expiry of 7 days from the notification referred to in 2.11, the Seller shall be entitled to deliver the Goods to the Buyer as provided in these Conditions whether or not the Buyer has carried out any testing or inspection.

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative by way of Order Confirmation.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Quotation and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.4 The Seller reserves the right to make any changes in the specification of the Goods and the substances, chemicals and materials used to manufacture the Goods but any such changes shall not materially affect the quality or performance of the Goods.

3.5 The Goods shall be supplied subject to the tolerances set out in the Seller's catalogue and sales literature when the Contract is made.

3.6 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price

4.1 Subject to 4.2, the Price shall be the Seller's ruling price as at the date of delivery of the Goods. Payment shall be made in sterling unless otherwise agreed.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price beyond the ruling price referred to in clause 4.1 to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, introduction of the Euro. currency regulation, alteration of duties, significant increase in the costs of labour, materials and other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing between the Buyer and the Seller, the Price shall be on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's additional charges for transport, packaging and insurance.

4.4 The Price and any additional charges payable hereunder shall be exclusive of any applicable value added tax or other tax or duty relating to the sale or delivery of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and containers unless otherwise agreed in writing between the Buyer and the Seller will be charged to the Buyer in addition to the Price.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the Price by the last day of the calendar month following delivery and the Seller shall be entitled to recover the Price, notwithstanding that delivery might not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipt for payment will be issued only upon request.

5.3 All amounts due under these Conditions shall be paid in full without any deduction or withholding and the Buyer shall not be entitled to assert any credit set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods or the Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest from the due date up to the date of actual payment in full (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis and be compounded quarterly.

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection on payment of the collection charge then specified in the Seller's price list or, if some other place for delivery is agreed by the Seller, the Seller delivery the Goods to that place.

6.2 In the event that the Seller is to deliver the Goods other than by making the same available for collection at its producing works, the method of carriage shall, unless otherwise agreed in Writing, be at the discretion of the Seller. Any transport or freight arranged or undertaken by the Seller shall be arranged or undertaken as agent for the Buyer and the Seller shall have no liability for any loss or damage to the Goods after the same have left the Seller's premises. The Seller may supply the Goods from any of its producing works.

6.3 The Seller shall only be obliged to deliver the Goods to a safe and suitable site at the place of delivery such as an area of hard standing. The Seller shall decide in its absolute discretion upon the safeness and suitability of any such site.

6.4 The Seller reserves the right to charge to the Buyer any costs, charges or expenses incurred by the Seller as a result of vehicle detention or demurrage of ships in consequence of any act or omission of the Buyer, its employees or agents, or as a result of special requirements or stipulations of the Buyer not provided for in the Contract.

6.5 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.6 Where the Goods are to be delivered in instalment, each delivery shall constitute a separate contract and 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 instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.7 If the seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price.

6.8 If the Buyer fails to take delivery of the Goods within 7 days of notification that the Goods are ready for collection or fails to give the Seller adequate delivery instructions at the time stated for delivery (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:

6.8.1 deliver the Goods to the Buyer's address on the Buyer's order; or

6.8.2 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage: or

6.8.3 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

7.1.1 in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, after the time the Goods have left the Seller's premises.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price and the price of all other goods and services agreed to be supplied by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored and protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the Property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 The Seller shall have a first and paramount lien over any goods or property of the Buyer in its possession for all sums due and payable to the Seller.

7.7 Risk of damage to or loss of any free issue material supplied by the Buyer to the Seller shall remain at all time with the Seller who shall bear full responsibility for insuring or otherwise safeguarding such material.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with the Specification at the time of delivery.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any Specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, improper or unsuitable storage conditions, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to goods or materials not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer which is based on any failure of the Goods to correspond with the Specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 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 30 days of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in quality or condition thereof or their failure to meet the Specification is notified to the Seller in accordance with these conditions the Buyer shall give the Seller a reasonable opportunity to inspect the Goods prior to use or processing. The Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the contract shall not exceed the Price, except as expressly provided in these Conditions.

8.7 The Buyer acknowledges and accepts that it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in these Conditions as a warranty. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

8.8 The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 difficulties in obtaining raw material, labour, fuel, parts or machinery

8.8.7 power failure or breakdown in machinery or computer equipment;

8.8.8 failure of sub-contractors.

8.9 In the event that any of the circumstances referred to in 8.8 continue for a continuous period of 30 days and is continuing at the end of that time to such an extent that substantial performance of the contract is prevented then either the Buyer or the Seller shall be entitled to give written notice terminating the contract with immediate effect. In the event that the contract is so terminated, the Seller shall be entitled to be paid in full for all work completed to the date of termination and a fair proportion for any work partially completed.

8.10 The Seller shall endeavour to ensure that its business systems are year 2000 compliant but does not make any representations nor give any warranties in respect of such compliance. The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the delivery of the Goods, if the delay or failure arises from or is connected to the changes arising before, during or after the year 2000

9. Insolvency of Buyer

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer: or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business or (being a company) is wound up or dissolved (and no such step shall be taken by or on behalf of the Buyer without the Seller being given at least 5 business days' prior written notice thereof); or

9.1.4 steps are taken, proposed or threatened in respect of any of the events mentioned above or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the Prices shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Export Terms

10.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

10.2 The Buyer 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 on them.

10.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.5 Any marine insurance required to be effect by the Seller under the Contract shall, unless otherwise agreed in writing, be 10% over the invoice price and shall cover the interest from the commencement of transit to the destination named in the Contract as provided and contained in the Institute of London Underwriters ("the Institute") Cargo Clauses, the Institute's War Clauses and the Institute's Strikes, Riots and Civil Commotion Clauses, current at the time of shipment.

11. ECSC

11.1 The Order must show the final destination of the Goods and this destination may not be altered without the prior written consent of the Seller.

11.2 The goods are sold on the condition that they will not be re-sold by the Buyer or its buyers or sub-buyers for delivery in an unprocessed state outside the Territory of the ECSC. The Buyer shall be responsible for any breach of this condition and the Buyer shall also be responsible for ensuring that no goods sold to him by the Seller for delivery outside the ECSC shall be re-imported in an unprocessed state into the ECSC either by the Buyer or any of its buyers or sub-buyers. On receipt of a written demand from the Seller, the Buyer shall produce evidence of the ultimate destination of the Goods.

11.3 If the Buyer re-sells in an unprocessed state any goods bought from the Seller then, unless such resale is made from stock, the Buyer shall comply in respect of such resale with the requirement of High Authority Decision NO. 30/53 (as amended from time to time) and also comply, as appropriate, with High Authority Decision No. 31/53 (as amended from time to time) or High Authority Decision No. 37/54 (as amended from time to time) and also comply with all other applicable requirements from time to time of the High Authority or of the

European commission. The references in this Condition of the High Authority are to the High Authority of the ECSC constituted by the Treaty of Paris of 18 April 1951.

12. General

12.1 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 notice.

12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 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.

12.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.