

1. GENERAL.

In these conditions 'the company' means [BLE Smoke & Fire Curtains Limited] (company number 05298742), and 'the registered office' means the registered office for the time being of the company. The 'Buyer' means a company, firm or person who places an order with the company or accepts the quotation or tender provided by the company for the manufacture and or supply of any goods.

2. THE COMPANY'S CONDITIONS.

- a) These terms and conditions shall apply to all contracts for the sale of goods entered into by the company to the exclusion of all other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice, course of dealing or whether express or implied by law or other means.
- b) No variation of or additions to these terms and conditions shall be binding upon the company unless expressly accepted by the company in writing under the hand of an authorised official of the company.
- c) Where the company agrees to provide an installation and/or commissioning service in addition to the sale of goods, these conditions shall apply to the part of the transaction relating to the sale of goods only; installation, commissioning and/or servicing shall be governed by a separate set of conditions.

3. ACCEPTANCE.

Either:

- a) Unless previously withdrawn by the company (in writing), quotations and tenders are open for acceptance by the Buyer for the period stated therein or if no specific period is stated then the period shall be within thirty (30) days from the date thereof. Acceptance by the Buyer shall be in writing and subject to these conditions, the date of acceptance shall be the point the contract for the sale of goods shall come into existence. **Or:**
- b) All orders must be in writing and must be accompanied by sufficient information to enable the company to proceed without delay with the execution of the order. Orders shall not be binding upon the company (they shall be considered only as 'offers') unless accepted by the company in writing and shall be deemed to be subject to these conditions. The Order shall only be accepted when the Seller issues a written acceptance of the Order ("Order Acceptance"), the date of the Order Acceptance shall be the point the contract for the sale of goods shall come into existence.

4. SPECIFICATIONS AND PERFORMANCE.

- a) The quantity, quality, design, materials used and description of and any specification for the goods shall be those set out in the company's quotation or tender, or alternatively, as contained in the company's Order Acceptance to the Buyer's order. The company reserves the right to change the design, materials used and specification of the goods to conform with any applicable change in legislation, for commercial reasons (acting reasonably) and/or as the market requires from time to time.
- b) Subject to clause 4(c), the company warrants that the goods will be of satisfactory quality and the company has used reasonable skill and care in the design of the goods.
- c) The warranty in clause 4(b) is subject to the following conditions:
 - i) the company shall be under no liability in respect of any defect in the goods arising from or in connection with any drawing, design, information, data or specification supplied by the Buyer (or any third party acting on behalf or on instruction of the Buyer);
 - ii) the company shall be under no liability in respect of defects in the goods due to the company's design so far as it proves that the company has used reasonable skill and care to ensure that the design complied with the information provided by the Buyer (or any third party acting on behalf or on instruction of the Buyer);
 - iii) the company shall be under no liability in respect of any defect arising from deliberate default, wilful misconduct, wilful damage or negligence of the Buyer (or any third party acting on behalf or on instruction of the Buyer), abnormal working conditions, failure to follow the company's instructions (whether oral or in writing), misuse, alteration or repair of the goods (except where such alteration or repair is carried out by the company);
 - iv) the above warranty does not extend to parts, materials, equipment or to items not supplied by the company and/or goods that have been serviced or maintained by the Buyer or any third party (other than the company or other third party instructed by the company to act on behalf of the company); and
 - v) the warranty does not extend to any defect, loss and/or damage arising from any works or services completed by or on behalf of the Buyer by the Buyer or any third party (with the exception of any works or services carried out or commissioned by the company).
- d) In the event that any information provided by the Buyer (or any third party acting on behalf of or on the instruction of the Buyer) in relation to the quantity, quality, design, materials used, description and/or specification (including, but not limited to, measurements, fittings and/or fabric of the building/structure for the installation) of the goods is incorrect, insufficient and/or inaccurate, the Buyer shall indemnify and keep indemnified the company against all actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages, commercial disadvantage and/or any other liability whatsoever or howsoever caused arising from or in connection with the information provided. For the avoidance of doubt, the Buyer shall be liable to pay for the goods supplied in accordance with the order, Order Acceptance, quotation and/or tender.
- e) Other than as set out in these conditions, all warranties, conditions and other terms implied by law (statutory or otherwise), are hereby excluded to the fullest extent permitted by law.
- f) The company reserves the right to change its specifications from time to time without prior notice to the Buyer as conditions warrant.
- g) Any performance data, instructions or advice as to the suitability or use of goods given in the company's literature or included in the company's quotations, tender, Order Acceptance and/or elsewhere shall not form part of this contract unless specifically stated so to do in writing by the company.
- h) Any timescales given by either party in relation to the manufacture and/or delivery of Goods are for information only and not intended to be relied upon. Any timescales given are not: terms of the contract, warranted, conditional or guaranteed by the company.

5. PRICE.

- a) All prices include only such goods, accessories and work as are specified in the Order Acceptance, tender or quotation (as applicable) and are for the quantities expressed in conjunction with them. Any variation in quantity must be agreed in writing and may entail the company varying the price of the goods.
- b) All prices are subject to revision or withdrawal without notice.
- c) All prices in respect of orders for forward delivery are subject to the company's right to vary them.
- d) All prices are quoted ex works unless otherwise agreed.
- e) All prices are subject to VAT at the appropriate rate, if applicable.
- f) At any time before delivery has been completed the company shall be entitled to vary the price of the goods to take into account of all or any of the following factors:

- i) where goods are imported, any variation of the official currency, exchange rates or special taxes or charges imposed by any government;
 - ii) increased costs resulting from the prohibition or other actions of any government.
 - iii) increased labour costs;
 - iv) increased material costs; and
 - v) variation in the rate of VAT or any other tax and/or levee due.
- g) The company reserves the right not to manufacture, deliver and/or supply any goods to the Buyer in the event the company has not received full and clear payment of funds for the goods and/or any other costs owed by the Buyer. The company shall not be liable in any way for any actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages and/or commercial disadvantage (including any direct, indirect or consequential losses, loss of profit/savings, loss of reputation, any interest, penalties and/or other costs and expenses suffered or incurred (whether actual or anticipated)) that the Buyer incurs or may incur in the future of any type whatsoever and howsoever caused by or in connection with any delay to manufacture, deliver and/or supply any goods where the Buyer's has failed to pay any amount due to the company.
- h) All invoiced price discrepancies and/or any disputed sum must be notified by the Buyer to the company in writing within five (5) working days of the date of the invoice. In the event that the Buyer does not notify the company of a price discrepancies and/or any disputed sum within five (5) working days, the Buyer shall be deemed to have accepted the invoice.

6. CARRIAGE AND METHOD OF FREIGHT.

Orders, quotation and tenders for delivery of goods within or outside the United Kingdom will be subject to an additional delivery charge unless otherwise agreed in writing between the company and the Buyer.

7. DELIVERY.

- a) The company shall not be liable for in any way for any actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages and/or commercial disadvantage (including any direct, indirect or consequential losses, loss of profit/savings, loss of reputation, any interest, penalties and/or other costs and expenses suffered or incurred (whether actual or anticipated)) that the Buyer incurs or may incur in the future of any type whatsoever and howsoever caused by or in connection with any delay in delivering the goods or by their non-delivery whether or not time of delivery is or shall have been made of the essence of the contract.
- b) It is the Buyer's duty to inform the company regarding delivery dates and arrangements in advance and to provide due warning and notice of any change in respect of such arrangements. If by reason of the Buyer's default, unreasonable expectation or failure to notify, goods have not been taken up or delivered by the agreed delivery date the company may at its discretion (without prejudice to its rights to claim damages) suspend delivery of the goods or treat the contract as repudiated with regard to those goods, or store the goods at the expense of the Buyer until they are taken up, or do any combination of the foregoing.
- c) The company reserves the right to make a reasonable charge for storage if the delivery instructions are not provided by the purchaser within three (3) working days of a request by the company for such instructions.

8. RETENTION OF TITLE AND PASSING OF RISK

- a) The company shall retain title to and ownership of the goods until it has received payment in full in cash or cleared funds of all sums due for the goods supplied.
- b) Until full payment of the all the sums due:
- i) the Buyer shall be the bailee of the goods for the company and the goods shall be stored separately from any goods which belong to the Buyer or any third party and shall be clearly marked and readily identifiable as being the company property;
 - ii) the Buyer shall not permit the goods to be charged or encumbered in any way whether by operation of law or otherwise.
- c) The Buyer grants to the company an irrevocable licence at any time to enter on any premises owned or controlled by the Buyer to inspect (or, where the Buyer's right to possession of the goods has terminated, to remove and recover) any goods located there to which the company retains title under this Clause 8.
- d) If the Buyer fails to make any payment to the company when due under these conditions compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the company has reasonable cause to believe that any of these events is likely to occur, the Buyer's right to possession of the goods shall terminate immediately and the company shall have the right, without prejudice to any other remedies:
- i) to enter without prior notice any premises where goods owned by it may be, and to repossess and dispose of any goods owned by it so to discharge any sums owed to it by the Buyer pursuant to the contract and these conditions;
 - ii) to require the Buyer not to resell or part with possession of any goods owned by the company until the Buyer has paid in full all sums owed by it to the company pursuant to the contract and these conditions; and
 - iii) to withhold delivery of any undelivered goods and stop any goods in transit to the Buyer and recover them.
- e) Unless the company expressly elects otherwise, any contract between it and the Buyer for the supply of goods shall remain in existence notwithstanding (but subject to) any exercise by the company of its rights under this Clause 8.
- f) Except as otherwise provided in these conditions, the risk of loss or damage to the goods shall pass to the Buyer upon delivery of the goods.
- g) Once risk in the goods has passed to the Buyer in accordance with Clause 8(e) or otherwise, the goods shall be and remain at the Buyer's risk at all times unless and until the company has retaken possession of them. The Buyer shall keep the goods in a satisfactory condition and shall insure the goods against all normal risks with a reputable insurer. The company shall be entitled to have produced to it evidence that such insurance is in place and provide appropriate cover. The Buyer shall hold in trust for the company any monies received in respect of the goods under any such insurance policy.

9. PAYMENT.

- a) Payment shall be made before the expiration of thirty (30) days from the date of invoice or in accordance with other terms notified to the Buyer and shall be without deductions. In default of payment on the due date specified in the invoice the company, without prejudice to its rights hereunder may charge the buyer interest on overdue accounts at the rate of 5% over bank rate for the time being or 15% whichever the greater. The company shall at its discretion (without prejudice to the company's right to treat the contract as repudiated and claim damages) be entitled to withhold despatch of goods until all monies owing to it by the Buyer shall be paid in full. Without prejudice to any other provision of these conditions the company may in its absolute discretion if doubts arise as to the Buyer's solvency suspend deliveries hereunder until satisfactory security has been given for due performance by the Buyer of its obligations hereunder.
- b) No special terms of payment will be operative unless confirmed in writing by a director of the company.

10. CURRENCY AND PLACE OF PAYMENT.

All payments must be made in sterling to the company at its registered office or its nominated bank account.

11. DESPATCH IN LOTS.

The company shall have the right to despatch any portion of the goods covered by the contract and to invoice the Buyer for such portion so despatched on the same terms and conditions set forth herein.

12. LOSS OR DAMAGE IN TRANSIT AND NON-DELIVERY OF THE GOODS.

a) No responsibility or liability will be accepted by the company whatsoever or howsoever caused:

i) for any shortage, loss or damage occurring in transit except where the company has organised transit and the Buyer makes a claim in writing providing full particulars on both the carriers and the company at its registered office within three (3) working days of receipt of the goods;

ii) for non-delivery of the goods except where the company has organised transit and the Buyer makes a claim in writing providing full particulars on both the carrier and the company at its registered office not less than three (3) and not more than five (5) working days after the expected date of delivery provided in the company's delivery advice note; and/or

iii) where goods are collected by the Buyer or any third party acting on behalf or on instruction of the Buyer, no claim for shortages, loss or damage will be considered.

b) If on investigation into a claim for any shortage, loss or damage occurring in transit or non-delivery of goods where the company has organised transit, the company finds that a claim for shortage, loss or damage or non-delivery is incorrect, false or misleading, the Buyer shall pay any and all costs and expenses incurred by the company in investigating and establishing such claim is incorrect, false or misleading on an indemnity basis (including, but not limited to, administration charges, staff time, legal fees, flights, accommodation and subsistence costs).

c) Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with the specification shall be notified to the company within seven (7) days from the date of delivery or, where the defect was not apparent on reasonable inspection, within a reasonable time after discovery of the defect and the company shall be entitled to replace or repair the goods free of charge or, at the company's sole discretion, refund to the Buyer the price of the goods (or a proportionate part of the price), but the company shall have no further liability to the Buyer whatsoever. If the Buyer does not notify the company accordingly, the Buyer shall not be entitled to reject the goods and the company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the sums due as if the goods had been commissioned in accordance with the contract and these conditions.

13. RETURN OF GOODS.

In no circumstances may goods supplied be returned without the Buyer having first applied for and obtained the written consent of the company. A handling charge may be deducted from any credit allowed by the company where the goods returned are not in the original packaging, of a resalable condition or where it is established that the reason for the return of the goods was not the subject of clause 12 hereof or due to any error on the part of the company.

14. CANCELLATION.

Any order may be cancelled or varied by the Buyer only with the consent of the company and on payment of reasonable cancellation or variation charges. Such charges shall take into account expenses incurred and commitments made by the company and all other losses due to such cancellation or variation. Cancellation cannot be accepted for purpose built goods.

15. FORCE MAJEURE.

The company shall not be in breach of the contract or these conditions nor liable for delay in performing, or failure to perform, any of its obligations under the contract or these conditions if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the company shall be entitled to a reasonable extension of the time for performing such obligations. In the event of a period of continuous delay or failure to perform of more than three (3) calendar months, the Buyer may elect to cancel the contract in accordance with the cancellation provisions contained in these conditions or allow the order to remain on the company's books and to be completed at some later date at an adjusted price. Where the Buyer elects to allow the order to remain on the books, the Buyer may at a later date elect to cancel the order subject to the said cancellation terms set forth herein.

16. GUARANTEE AND LIMITATION OF LIABILITY.

a) The Buyer shall have the benefit of and be subject to such product guarantee as the company from time to time provides and the Buyer is deemed to have full knowledge of the terms of such guarantees, copies of which will be supplied by the company on request and which are subject always to the Buyer maintaining the goods supplied in accordance with the company's instructions.

b) All goods supplied by the company must be checked on delivery and before installation. After installation, the function of the goods supplied must be rechecked before the Buyer sets in operation safety systems of which the goods supplied form a part.

c) In the event of the Buyer not holding himself out as acquiring the goods in the course of business and not acquiring them in the course of business, clause 15 hereof does not and will not affect his statutory rights.

d) Subject to this Clause 16, the company's liability for any actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages and/or commercial disadvantage and/or any other liability arising out of the performance or non-performance by the company of its obligations under the contract and these conditions (whether by virtue of negligence or otherwise) shall be limited up to a maximum of 100% of the price paid for the relevant Goods supplied to the Buyer under the relevant Order Acceptance, quotation or tender (excluding carriage costs and VAT).

e) The company shall have no liability to the Buyer for any actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages, commercial disadvantage and/or any other liability that the Buyer incurs or may incur in the future of any type whatsoever and howsoever caused by or in connection with performance or non-performance by the company of any of its obligations under these conditions (whether by virtue of negligence or otherwise) which falls within any of the following categories:

i) any implied warranty and/or condition;

ii) loss of business opportunity;

iii) loss of anticipated savings;

iv) loss of profit (whether actual or anticipated);

v) loss of data, equipment or property;

vi) economic loss;

vii) loss of interest or revenue;

viii) damage to goodwill;

ix) loss or damage suffered by third parties; or

x) indirect, consequential or special loss or damage of any nature.

f) Nothing in these conditions shall limit the company's liability to the Buyer for:

i) death or injury resulting from the company's negligence;

ii) fraud or fraudulent misrepresentation;

iii) any matter, liability for which the company cannot legally limit or exclude or attempt to limit or exclude.

17. CONSEQUENTIAL LOSS.

The Buyer shall indemnify and keep indemnified the company against all actions, proceedings, costs, claims, demands, liabilities, harm, losses, expenses, interest, deductions, penalties, damages, commercial disadvantage and/or any other liability whatsoever whether arising in tort (including negligence and statutory duty) default or breach of the contract or these conditions, or the goods or their storage, installation, use, operation or maintenance, save where the same is caused solely by the negligence of the company.

18. SUBSTITUTIONS.

If the company in its absolute discretion chooses to use alternate materials or parts, a substitute deemed by the company to be suitable for the intended purpose will be supplied if available, and shall be accepted by the Buyer in full satisfaction and performance of the contract or that part thereof for which it is a substitute as the case may be. In the event that the company is unable to obtain a satisfactory substitute for unavailable materials or parts, the company's obligations to complete performance of the contract shall upon notification in writing to the Buyer be suspended until such times as the unavailable material or parts or a suitable substitute becomes available, and the price shall be adjusted accordingly.

19. ENTIRE AGREEMENT CLAUSE.

Any terms and/or conditions set out in the Buyer's enquiries, purchase orders or communications are excluded from the contract and these conditions.

These conditions and the contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

Each party acknowledges that in entering into this conditions and the contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this conditions and the contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this conditions and the contract.

20. INDEPENDENT STATUS

The Buyer is an independent contractor, and nothing shall constitute the creation, establishment or relationship of partnership, agency, joint venture or employer and employee between the parties.

21. SUB-CONTRACTING.

The company shall be free to employ sub-contractors to manufacture any goods or part thereof to be supplied hereunder or to perform any of the company's obligations hereunder.

22. OVERSEAS SALES.

In the case of overseas sales the Buyer shall be solely responsible for complying with any legislation or regulations governing the importation of the goods or the payment of any duties, levies or other sums of money on such importation.

23. TERMINATION

a) A party (the "Non-defaulting Party") may by notice to the other party (the "Defaulting Party") terminate this Agreement with immediate effect if:

i) the Defaulting Party fails to pay an amount due under the contract and these conditions within 10 Days of the final date for payment set out in Clause 9;

ii) the Defaulting Party is in material breach of any provision of the contract and these conditions which is not remediable or, if remediable, is not remedied with a period of 14 days after the Non- Defaulting Party has given notice to the Defaulting Party requiring such breach to be remedied;

iii) the Defaulting Party's financial position is such that either the Defaulting Party, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Defaulting Party of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Defaulting Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; and/or

iv) the Defaulting Party appears to the Non-Defaulting Party to be unable to pay his debts (whether within the meaning of section 268 of the Insolvency Act 1986, or upon any other reasonable grounds including without limitation where a debt owing by the Defaulting Party to the Non- Defaulting Party or to a third party has become due and payable and has not been met on the due date therefor), or presents his own or has presented against him in bankruptcy petition or a bankruptcy order is made against him, or the Defaulting Party takes any formal step to implement an individual voluntary arrangement (within the meaning of the Insolvency Act 1986).

b) Any termination of the contract for any reason shall not affect any accrued rights or liabilities of either party whether under statute, in contract tort or otherwise, nor prevent either party from pursuing other remedies available to it.

c) Termination of these conditions and/or the contract shall not affect the operation or continuance of Clauses 2 to 30 (inclusive) which shall remain in full force and effect.

24. VARIATION

No variation of these conditions shall be effective unless it is in writing and signed by the parties.

25. ASSIGNMENT

These conditions are personal to the parties and neither party shall assign, transfer, mortgage, charge or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party.

26. NOTICE

Any notice or document required or permitted to be given or served under these conditions may be given or served personally or by leaving the same or by sending the same by first class recorded delivery post or by e-mail in accordance with the details provided in the contract or as otherwise notified in writing to the other party for that purpose.

27. NO WAIVER

No failure or delay by the company to exercise any right or remedy provided under these conditions or by Law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

28. SEVERANCE

If any court or competent authority finds that any provision of the contract and/or these conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the contract and/or these conditions shall not be affected.

If any invalid, unenforceable or illegal provision of the contract and/or these conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

29. THIRD PARTY RIGHTS

A person who is not a Party to the contract and/or these conditions shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

30. GOVERNING LAW AND JURISDICTION

The contract and/or these conditions and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the Law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract and/or these conditions or its subject matter.