

Standard Terms and Conditions of Sale

The Waterproofing Group plc, trading as Marley Waterproofing and referred to below as 'the Company', is only willing to supply products under these trading terms or under these trading terms with variations agreed by the Company in writing. These trading terms supersede any previously issued by the Company.

CONDITIONS OF SALE

They impose obligations on Purchasers to notify the Company of certain matters within the time limits stated and they limit the liability of the Company. [References to TWG plc Companies shall include all companies in the TWG plc Group as defined by the Companies Act 1985, schedule 4].

1) Creation of Contract

A quotation by the Company shall not constitute an offer and no contract shall be taken as formed except by the Purchaser's order being accepted in writing by the Company or by collection or delivery of the Goods.

2) Conditions of Trading

- a) The ordering of goods by the Purchaser or the accepting of delivery or the collection of the Goods by the Purchaser shall be deemed to be unconditional acceptance by the Purchaser of these Conditions and its acknowledgement that they supersede, override and oust:
 - i) all previous negotiations, representations or agreements between the parties;
 - ii) any other terms and conditions in any document or other communication used by the Company or the Purchaser.
- b) No variation of or addition to these Conditions shall form part of any contract unless specifically accepted by the Company in writing.
- c) No addition or variation to an order may be made by the Purchaser after the Company has accepted the order to which it relates. Any purported addition or variation shall be treated as a separate order at the time it is made and priced accordingly.
- d) Orders for non standard items cannot be varied once the manufacturing process has started or any special materials or equipment had been ordered by the Company.
- e) The construction validity and performance of all contracts shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the non-exclusive jurisdiction of the English Courts.

3) Prices

- a) In the absence of any specific written provision to the contrary, the prices to be charged shall be the prices ruling at the date of despatch of the Goods in accordance with the Purchaser's price list.
- b) Unless otherwise expressly stated in writing by the Company orders are accepted on the basis that the price stated is the net price of the Goods (after deduction of any discounts) for delivery in accordance with the contract and sold subject to these Conditions. Where any amendment or variation to these Conditions is agreed in writing by the Company the price may be increased. The Company may at any time prior to the Goods leaving the Company's premises increase the stated price to reflect all or part of any increased raw material, labour or transportation costs suffered by the Company since the price was stated. Such revised price shall be binding on the Purchaser. Where the Company's quotation or stated price does not refer to Value Added Tax it shall be deemed to be exclusive of any Value Added Tax which shall be payable in addition.
- c) All orders must be for a full carton or roll or for multiples thereof as shown in the Purchaser's price list and orders for intermediate amounts will be treated and charged as though they were for the next multiple.

4) **Cancellation**

In the event that the Company accepts a request from the Purchaser to vary or cancel an order before despatch, a charge of £20 or 2½% of the value of the variation (whichever is the greater) will be made.

5) **Payment**

- a) Accounts are due and payable on the 30th day of the month following the month in which the Goods are delivered or collected.
- b) A 2.5% discount is allowed on all accounts for which payment is received by the Company on or before the 20th day of the month following the month of invoice unless otherwise expressly agreed in writing by the Company. If payment is received after the due date and settlement discount has been taken this will be re-invoiced to the Purchaser and will be due for immediate payment.
- c) The Purchaser will not be considered to have paid any amount tendered by cheque unless and until it has been credited to the Company's bank account.
- d) If the Purchaser shall fail to make payment in full in accordance with sub-paragraph (a) of this Condition then (without prejudice to any other rights of the Company and in addition to the loss of any discount) the Purchaser shall without any need for the Company to give notice become liable to pay the Company interest on the amount for the time being unpaid. This interest shall be calculated at 3% per annum above the annual Base Rate from time to time of Natwest Bank plc calculated from the date of due payment until the date of actual payment. It shall be payable after as well as before any judgment.
- e) If the Purchaser shall fail to make payment in accordance with sub-paragraph 5 (a) of this Condition then:
 - i) the Company shall be entitled to suspend without incurring any liability all or any other deliveries to be made under that or any other contract with the Purchaser. In such event the Purchaser shall not in any respect be released from its obligations to the Company under that contract; or
 - ii) instead of such suspension the Company shall be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with Condition 12 below and to claim damages from the Purchaser.
- f) The Purchaser shall not without the written consent of the Company be entitled to deduct or set off from any payment due pursuant hereto any claim for loss or expense alleged to have incurred by the Purchaser by reason of any breach or failure to observe the provisions of this or any other contract by the Company and the Purchaser expressly waives any common law right of set off to which he may be entitled.
- g) Where carriage, packing or other charges are stated separately from the price they will nevertheless be payable by the Purchaser at the same time as if they formed part of the price and shall be treated as such. The Company shall be entitled to sue for the price of the Goods and such other charges whether or not title in such goods shall have passed to the Purchaser in accordance with Condition 8 below.
- h) Time for payment is of the essence.
- i) Notwithstanding the foregoing the Company reserves the right to require payment of the price before delivery of any of the Goods or at any time thereafter.
- j) The Company shall be entitled but not obliged at any time or times without notice to the Purchaser to set off any liability of the Purchaser to the Company against any liability of the Company to the Purchaser (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purposes convert or exchange any currency. Any exercise by the Company of its rights under this clause shall be without prejudice to any other rights or remedies available to the Company under this agreement or otherwise.

6) **Deliveries Collections and Liability for Delayed Delivery or Failure to Supply**

- a) Whilst the Company will use all reasonable endeavours to keep any stated delivery or collection dates or times of the day it accepts no liability whatsoever for any damage or loss (including any consequential loss) resulting from delayed delivery or availability for collection unless:
 - i) a delivery or collection date or programme has been agreed in writing; and

- ii) the Company has failed for at least 21 days after the agreed date to make a delivery or make the Goods available for collection; and
 - iii) the Purchaser has then given the Company at least 7 days notice in writing of its intention to rescind the contract or bring a claim and at the end of the period given the Goods have not been delivered or made available for collection.
- b) In the event that a valid claim is notified to the Company in accordance with these Conditions the Company shall under no circumstances whatsoever have any liability to pay to a Purchaser a sum greater than the price of the Goods in respect of which failure to deliver or make available for collection is alleged.
 - c) On notification to the Purchaser that the Goods are ready for despatch (and where appropriate within the framework of a delivery or collection programme) the Purchaser shall accept immediate delivery or in the case of collection from the Company's premises shall arrange for collection of the Goods failing which the Company may:
 - i) either effect delivery by whatever means it thinks most appropriate or arrange storage at the Purchaser's risk and expense pending delivery; and
 - ii) after 14 days notice to the Purchaser requiring it to take delivery at any time, re-sell or otherwise dispose of the Goods or part of them without prejudice to any other rights the Company may have against the Purchaser for breach of contract or otherwise.
 - d) If the Goods are not delivered on the expected date the Purchaser shall give written notice to the Company within 48 hours.
 - e) In cases where the Company concludes the contract of carriage and/or arranges for the insurance of the Goods in transit, the Company shall be deemed to be acting solely as agent of the Purchaser and sub-sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable.

7) Delivery and Risk

- a) Where the price quoted and accepted is for delivery at the premises of the Purchaser or a third party such delivery shall be made on hard roads to a hard and safe draw-in site suitable for unloading during normal working hours on normal working days and it shall be the responsibility of the Purchaser to ensure that delivery can be made in this manner.
- b) If it has been agreed that the Company will deliver the Goods at the premises of the Purchaser or a third party the Purchaser shall provide good firm level and cleared ground on which to stack the Goods. It shall be the responsibility of the Purchaser to ensure that the Goods are properly and safely stacked, stored and protected.
- c) It shall be the responsibility of the Purchaser to off-load the Goods at its expense and risk shall pass once the delivery vehicle arrives at the premises of the Purchaser or third party as appropriate.
- d) Where the price quoted and accepted is for collection of the Goods from the Company's premises it shall be the Purchaser's responsibility to arrange collection of the Goods in suitable and safe vehicles during normal working hours on normal working days and only after prior agreement with the Company. Risk shall pass when the Goods are loaded on to the collection vehicle provided by the Purchaser or its agent and entry of the Purchaser's vehicles onto the Company's premises shall be at the Purchaser's risk (save for any claim arising from the Company's negligence which has resulted in personal injury or death).
- e) The Purchaser shall keep the Goods fully insured against all risks normally insured against at least throughout the period between the risk therein passing to the Purchaser and the title therein ceasing to remain with the Company.
- f) The Purchaser shall fully indemnify the Company in respect of any claims, liabilities, damages, costs and expenses made against or incurred by the Company by reason of damage caused to person or property and arising out of a failure by the Purchaser to comply with the provisions of this Condition.

8) Title to Goods

- a) Notwithstanding delivery or collection of the Goods or of any documents relating to them the Company will remain the sole and absolute owner of each item of Goods. Title shall not pass until payment has been made in full of:

- i) the price for the Goods; and
 - ii) any other sums payable in respect of the Goods including interest payable here-under; and
 - iii) any other sums payable (whether due or not) for other Goods previously or subsequently sold by the Company to the Purchaser and any other sums payable in respect of those other Goods including interest:
 - iv) the price for any Goods and Services and any other sums payable in respect thereof to any other TWG plc Company that has supplied Goods or Services to the Purchaser.
- b) For the purpose of these Conditions all Goods of the same description purchased by the Purchaser from the Company and subsequently used or sold by the Purchaser shall be deemed to have been used or sold on a 'first in first out' basis so that the Goods remaining unused or unsold are deemed to be those most recently purchased. The Purchaser shall unless otherwise agreed by the Company in writing ensure that all Goods which are in the possession or control of the Purchaser and the property in which remains with the Company are stored separately and labelled so that they may be readily identified.
 - c) The Purchaser may sell any item of the goods in the ordinary course of its business prior to the Company receiving payment in full of such item and in such event the Purchaser shall hold on trust for the Company and shall account to the Company for the proceeds of sale of such item.
 - d) The Company shall be entitled by its employees or agents to enter upon or into any land, buildings or vehicles where the Goods or part of them are situated to retake possession of them. Upon request the Purchaser shall notify the company of the location of any goods which are the company's property.

9) **Claims for Defective Goods. Etc.**

- a) Whether the Goods have been delivered by the Company or have been collected by the Purchaser, the Purchaser shall immediately after off-loading is completed (or at the earliest opportunity thereafter if there is no representative of the Purchaser available when the offloading of the Goods is completed) examine the Goods to check that the correct quantity has been delivered and as far as is apparent that they have no apparent defects. If the Goods have been delivered by the Company and the Purchaser was present when off-loading was completed and is satisfied with the Goods following their examination the Purchaser will on request by the delivery driver sign a receipt slip. If the Purchaser is not satisfied with the Goods following their examination the Purchaser shall:
 - i) if the defect is of fundamental importance immediately notify the Company that it refuses to accept the Goods and indicate the nature of its dissatisfaction; such notification must in every case be within 24 hrs of delivery or collection and confirmed in writing to the company within 4 days thereof;
 - ii) in all other cases indicate on any receipt slip used the nature of its dissatisfaction and obtain the countersignature of the Driver on the same slip and confirm or indicate the same in writing to the Company within 4 days of delivery or collection; and
 - iii) always give the company an opportunity to inspect the Goods concerned in the condition and location in which they were off-loaded.
- b) The Company requires all claims to be made by the Purchaser to the Company in writing as soon as possible and:
 - i) claims in respect of short delivery or in respect of defects which are apparent on examination must be made in any event within 4 days of delivery;
 - ii) claims in respect of defects which are not apparent on examination must be made in any event within 4 days of discovery;
 - iii) time for making all such claims is of the essence of the Contract and the Company's liability shall be limited as set out in condition 10.
- c) The Purchaser shall not be entitled to reject the Goods or any part thereof by reason only of short delivery.
- d) Should the Purchaser refuse delivery or collection of the Goods on the grounds of damage the Company will make a restocking charge if those Goods are found not to be damaged when inspected at the Purchaser's premises or received back at the Company's premises. All expenses for collection of the Goods from the Purchaser's premises shall be for the Purchaser's account and any charges made to the Company in connection with the return will

be recharged to the Purchaser's account before any reimbursement is made in respect of the goods returned.

- e) If the Purchaser wishes to return any Goods supplied under this or any other contract he shall in the first instance obtain the Company's permission in writing. Any arrangements for the return of goods once agreed with the Company shall be the responsibility of the Purchaser and all expenses for collection of the Goods from the Purchaser's premises shall be for the Purchaser's account. Any reimbursement due to the Purchaser will be subject to the condition of the Goods on receipt back at the Company's premises and calculated on the basis of the price originally charged for them. A restocking charge may also be made.
- f) Without prejudice to Condition 10, under no circumstances shall the Company be liable to the Purchaser for any claim arising out of:
 - i) any description, samples, specification or other particulars relating to the Goods or their suitability for any particular purpose or for use under specific conditions unless they form part of this Contract. If the Purchaser intends that any such particulars not contained in the Company's Publications valid at the date the Goods are ordered form part of this Contract it must so notify the Company in writing. Such notification must be made prior to the Goods being ordered and shall only apply to Goods ordered after the company has confirmed in writing to the Purchaser that the particulars are accepted;
 - ii) technical information, recommendations, statements or advice given by or on behalf of the Company relating to the methods of fixing or installing the Goods unless given in writing.

10) **Warranty and Indemnity and Limits on Claims**

- a) Subject to the conditions set out below the company warrants that the Goods will correspond at the time of delivery:
 - i) with any sample agreed to be representative of the Goods to be supplied;
 - ii) with the description, specification and particulars of the Goods contained in the Company's Publication valid at the date the Goods are ordered and upon which the Purchaser shows it relied; and
 - iii) with any additional description specification to particulars forming part of the Contract after notification pursuant to Condition 9(d).
- b) The above warranty is given by the Company subject to it being under no liability:
 - i) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal conditions of working or of use, failure to follow the Company's instructions (whether oral or in writing), or misuse of the Goods;
 - ii) under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - iii) in the event that the Goods suffer from colour or other minor variances or irregularities which habitually occur in products manufactured by the process used by the Company.
- c) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law. The Statutory Rights of Consumers are not affected by these Conditions.
- d) Any claim by the Purchaser which is based on matters referred to in Condition 9(b) shall be notified in the manner and within the time limits set out therein; and
 - i) if the Purchaser did not refuse to accept the Goods and did not duly notify the Company of a claim in accordance with these Conditions:
 - a) the Purchaser shall not be entitled to reject the Goods; and
 - b) the Company shall have no liability; and
 - c) the Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
 - ii) in the event that a valid claim is notified to the Company in accordance with these Conditions, the Company shall deliver or make available for collection as appropriate replacement Goods free of charge or at the Company's sole discretion refund to the Purchaser the price of the Goods.

- iii) under no circumstances whatsoever shall the Company have any liability to a Purchaser in respect of any of the matters referred to in Condition 9(b) greater than that expressed in this sub-clause.
 - e) In the case of any claim by the Purchaser which is based on any defect in the quality or conditions of the Goods or their failure to correspond with a sample or their description specification or particulars a representative number of the relevant batch of the goods shall be taken in the presence of an authorised representative of the Company and shall be referred for appropriate testing to an expert to be mutually agreed upon, or failing such arrangement to be nominated by the President for the time being of the Institute of Civil Engineers and the report of such an expert shall be final and binding on parties, the expert's fee for performing such tests shall be paid by the Company in the event that a valid claim is established by the Purchaser but shall otherwise be paid by the Purchaser.
 - f) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Purchaser 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 or any advice or assistance given relating to the Goods or their handling installation use or disposal for any direct or consequential compensation whatsoever (and whether caused by negligence of the Company, its employees or agents or otherwise) which shall arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser, except as expressly provided in these Conditions.
 - g) The Purchaser shall indemnify the Company in respect of any claims, proceedings, liabilities, damages, costs and expenses of whatsoever nature made against or incurred by the Company and arising out of failure by the Purchaser to observe the company's instructions (whether oral or in writing) relating in any way whatsoever to the Goods.
- 11) **Health and Safety at Work**
The Purchaser shall observe the health and safety instructions issued from time to time by the Company (copies of which are available on request) and shall be solely responsible for and shall keep the Company indemnified against any claims, liability, damage, costs and expenses arising directly or indirectly from use of the Goods other than in accordance with such health and safety instructions.
- 12) **Force Majeure**
The Company shall not be liable for any loss or damage caused by non-performance or delay in the performance of any of its obligations to the Purchaser due to act of God, war, civil disturbance, government action, strike, lock out or trade dispute (whether involving its own employees or any other person), difficulties in obtaining materials, breakdown in machinery, fire or accident or any other causes whatsoever beyond the control of the Company. Should any such event occur the Company reserves the right to cancel or suspend the Contract with the Purchaser without incurring any liability for any loss or damage thereby occasioned.
- 13) **Default**
- a) The Company may by notice in writing to the Purchaser terminate any contract forthwith if:
 - i) the Purchaser shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of this or any other contract with the Company and on its part to be observed and performed;
 - ii) the Purchaser compounds with or negotiates for any composition with its creditors generally;
 - iii) being an individual the Purchaser shall die or have a receiving order against him or commits an act of bankruptcy or enters into a voluntary arrangement; or
 - iv) being a Company the Purchaser shall call any meeting of its creditors or have a Receiver or Administrator appointed to enter into any liquidation.
 - b) In the event of any such termination the Company shall in addition to exercising its rights to repossession of the Goods under Condition 8 of these Conditions be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Purchaser to the Company under this or any other contract.
 - c) The provisions of (a) and (b) above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.

14) **Variations in finish/Product Development**

Whilst every effort is made to maintain continuity and consistency, the manufacturing processes do not make it possible to guarantee a colour match from batch to batch.

As part of the Company's commitment to continuous product development, it reserves the right to change product specification, design and/or colour range, without prior notice.

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