

Mila Conditions of Sale

- 1.1 All quotations, offers and tenders are made and all orders are accepted subject to the following conditions. Except as otherwise provided in these conditions, all other terms, conditions or warranties are excluded from any contract between Heywood Williams Components Limited t/a Mila Hardware (the "seller") and its customer (the "buyer") unless expressly accepted in writing by the seller.
 - 1.2 If there is a conflict between these conditions and any other terms of the seller's quotation, offer, tender or acknowledgement of order, such other terms shall prevail.
 - 1.3 Quotations shall only be valid for a maximum period of 14 days from date of issue and may be withdrawn by the seller by written or oral notice to the buyer at any time prior to the contract being formed. The contract will only be formed when the seller has accepted the buyer's order.
 - 1.4 If any statement or representation has been made to the buyer by the seller or its officers, employees or agents (other than in the document(s) enclosed with the seller's quotation or acknowledgement of order), upon which the buyer wishes to rely it shall only be entitled to do so if the statement or representation is attached to or endorsed on the buyer's order and then only if the seller subsequently confirms in writing to the buyer that the buyer is entitled to rely on the statement or representation.
 - 1.5 Prices are quoted by the seller on the basis of the limitations of liability set out in these conditions.
 - 1.6 Unless specifically agreed to the contrary all commercial terms shall be interpreted in accordance with the international commercial terms published by the International Chamber of Commerce ("Incoterms") current at the time the order is accepted.
- ## 2. Prices
- 2.1 The price of the goods shall be the price as set out or determined in accordance with the seller's current price list at the date of the order or the price as agreed with the seller in writing at the date of the order.
 - 2.2 Unless otherwise agreed in writing all prices are quoted net ex-works exclusive of vat. The seller reserves the right to amend the price list at any time, such amendment to be effective immediately upon notification to the buyer in writing in relation to all contracts entered into after such notification.
 - 2.3 The seller reserves the right to provide carriage at a separate charge to the goods at a rate set out in the current price list, or as agreed in writing by the seller.
 - 2.4 Where the seller delivers or arranges delivery of the goods, the buyer shall be liable to the seller for carriage costs, insurance costs and any demurrage costs incurred by the seller if vehicles are unduly delayed at the place of delivery.
- ## 3. Payment
- 3.1 Unless otherwise agreed by the seller in writing, payment shall be due and payable by the end of the month following the calendar month in which the invoice is

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dated and shall be made without any set-off, counterclaim or deduction whatsoever.

3.2 The seller shall be entitled to submit its invoice with its delivery advice note or at any time following despatch except that where delivery has been postponed at the request of, or by the default of, the buyer, the seller may submit its invoice at any time after the goods are ready for delivery or would have been ready in the ordinary course but for the buyer's request or default.

3.3 Where goods are delivered by instalments the seller may invoice each instalment separately and the buyer shall pay such invoices in accordance with these conditions.

3.4 No disputes arising under the contract nor delays (other than delays acknowledged by the seller in writing), shall interfere with prompt payment in full by the buyer.

3.5 If the buyer shall default in payment, the seller shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-

3.5.1 To suspend any or all further deliveries under the contract and under any other contract or contracts between the seller and the buyer then current, without notice;

3.5.2 To charge interest on any amount outstanding at the rate of 8% per annum above the base rate of the bank of England, such interest being charged as a separate, continuing obligation not merging with any judgment together with any statutory debt recovery costs;

3.5.3 To serve notice on the buyer requiring immediate payment for all goods supplied by the seller under this and all other contracts with the buyer whether or not payment is otherwise due;

3.5.4 To sue for the price of the goods even though title may not have passed to the buyer.

3.6 The seller shall be entitled to apply monies received from the buyer in such manner as it chooses.

4. Delivery

4.1 Delivery of the goods shall be given and taken at the seller's premises unless the seller has specifically agreed in writing to arrange transport for the goods in which case delivery shall occur when the goods arrive at the designated place of delivery.

4.2 The seller shall be entitled to deliver goods in instalments and each such delivery shall be treated as a separate contract.

4.3 Time for delivery is given as accurately as possible but is not guaranteed. The buyer shall have no right to damages or to cancel the contract for failure for any cause to meet any delivery time stated nor shall the buyer be entitled to make, or to purport to make, time for delivery of the essence of the contract.

4.4 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the buyer.

4.5 If the buyer fails to take delivery of goods or to give the seller adequate delivery

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instructions (save where this is due to an act or omission by the seller) then, without prejudice to any other right or remedy available to the seller, the seller may:-

4.5.1 Store the goods until delivery and charge the buyer reasonable costs of such storage; or

4.5.2 Treat the contract as repudiated by the buyer either in whole or in part.

4.6 The seller will endeavour to comply with reasonable requests by the buyer for postponement of delivery of the goods but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to default by the seller then, without prejudice to all other rights and remedies available to the seller, the buyer shall pay all costs and expenses, including a reasonable charge for storage and transportation so occasioned.

4.7 The seller will not be liable for unloading the goods at the place of delivery or for placing them in position on site except by prior agreement in writing, and if the seller does participate in the unloading (whether with or without such prior agreement) the buyer will indemnify the seller in respect of claims brought against the seller relating to its or its agents participation in such unloading.

4.8 Section 32(2) of the sale of goods act 1979 shall not apply. The seller shall not be required to give the buyer the notice specified in section 32(3) of that act.

5. Packaging

5.1 Packaging supplied by the seller, unless otherwise expressly agreed in writing, is

intended to provide adequate protection in normal conditions of transit of expected duration. Where the seller indicates that such packaging is to be redeemed to the seller, the buyer shall be responsible for returning such packaging as soon as reasonably practicable, carriage paid and in good condition.

6. Export terms

6.1 The buyer shall be responsible for obtaining and complying with any necessary import/export licences, permits and contracts for the supply and delivery of the goods. It is the buyer's responsibility to ensure that the goods comply with all legal and customary requirements in all jurisdictions into which the goods may be shipped or resold (and it shall indemnify the seller and keep the seller indemnified against any losses, claims, damages or expenses suffered or incurred by the seller as a result of the buyer failing to do this.

7. Risk and title

7.1 Risk shall pass to the buyer (so that the buyer is then responsible for all loss or deterioration of the goods or for any damage occurring):-

7.1.1 If the seller is responsible for delivering or arranging for delivery of the goods, at the time when the goods arrive at the place for delivery (whether or not delivery is possible); or

7.1.2 In all other circumstances, at the time when the goods leave the premises of the seller.

7.2 The goods shall remain the sole and absolute property of the seller as legal and

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equitable owner until such time as all sums due to the seller from the buyer, whether in respect of the goods or other goods or services, have been paid in full.

7.3 The seller may recover goods in respect of which title has not passed to the buyer at any time and the buyer irrevocably licences the seller, its officers, employees and agents to enter upon any premises of the buyer, with or without vehicles, for the purpose either of satisfying itself that condition 7.4 Below is being complied with by the buyer or of recovering any goods in respect of which title has not passed to the buyer.

7.4 Until title to the goods has passed to the buyer under these conditions it shall possess the goods as fiduciary agent and bailee of the seller. The buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the seller. During such time as the buyer possesses the goods with the seller's consent, the buyer may in the normal course of its business sell or hire the goods as principal but without committing the seller to any liability to the person dealing with the buyer.

8. Cancellation and returns

8.1 Cancellation will only be agreed to by the seller on condition that all costs and expenses incurred by the seller up to the time of cancellation and all loss of profits and other loss or damage resulting to the seller by reason of such cancellation will be paid immediately by the buyer to the seller. The seller will not agree to cancellation of any orders for goods which are made to

order or bought in by the seller to order.

8.2 Goods returned to the seller without the seller's written consent will under no circumstances be accepted for credit.

8.3 Goods should only be returned to the seller with the seller's prior written consent and in accordance with the seller's returns procedure, a copy of which is available on request.

9. Variations

9.1 No variations to the goods required by the buyer shall be binding on the seller unless agreed by the seller and the buyer in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the goods. If the seller agrees to any such variation, any dates quoted for delivery shall be extended accordingly.

10. Specification

10.1 The seller reserves the right to alter the dimensions or composition of the goods supplied to conform to applicable standards or laws or otherwise within reasonable limits having regard to the nature of the goods.

10.2 Any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the buyer shall have complied with clause 1.4 Relating to statements and representations and the

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seller shall have given the confirmation referred to in that clause.

11. Warranties and liability

- 11.1 The seller takes reasonable steps to ensure that the goods shall be free from major defects for a period of one year following delivery (subject to fair wear and tear). However, the seller does not guarantee the decorative finish of the goods.
- 11.2 If the seller offers a guarantee period in its sales literature in excess of one year it warrants that such goods will be free from material defects in materials and workmanship for such extended guarantee period. However, should the buyer fail to make payment for the goods as required pursuant to these terms or should any of the events listed in clause 14.1 Happen to the buyer, the extended guarantee period shall be of no effect and the extended guarantee shall be deemed replaced by the normal warranty as provided at clause 11.1.
- 11.3 Any claim by the buyer which is based on any shortage or any defect in the quality or condition of the goods or their failure to correspond with specification which are visible on inspection shall (whether or not delivery is refused by the buyer) be notified to the seller within three (3) working days from the date of delivery. If delivery is not refused, and the buyer does not notify the seller accordingly, the buyer shall not (subject to clause 11.4) 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.
- 11.4 Any claim relating to defects in materials or workmanship that were not visible on delivery shall only be valid if such claim is made within one year following delivery of the goods (or if longer the guarantee period stated in the seller's brochure at the time the contract was made) and in any event within 7 days of discovery of the defect. The seller shall have no liability for any claims made following the expiry of such period.
- 11.5 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 seller in accordance with 11.3 Or 11.4 Above, the seller shall be entitled to repair or replace the goods (or the part in question) free of charge or, at the seller's sole discretion, refund to the buyer the price of the goods (or a proportionate part of the price), but the seller shall have no further liability to the buyer whatsoever.
- 11.6 For the avoidance of doubt, the remedies set out in condition 11.5 Above represent the seller's entire liability in respect of any defective goods and without limitation to the generality of the foregoing:-
- 11.6.1 The seller shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the buyer;
- 11.6.2 The seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the seller's instructions (whether oral or in writing), misuse or alteration or repair

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of the goods without the seller's approval;
and

11.6.3 In no event shall the buyer be entitled to reject the goods on the basis of any defect or failure which is so slight that it would be unreasonable for him to reject them

11.7 Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (i.e. outside of the course of his trade or profession), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.8 Except as expressly provided in these conditions, the seller shall have no liability to the buyer (whether arising under contract tort (including negligence) or otherwise) in excess of the price of the goods and shall have no liability for any indirect, special or consequential loss or damage or for any loss of profit, loss opportunity, loss of sales or loss of goodwill, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply of goods or their use or resale by the buyer.

11.9 Nothing in these terms and conditions shall limit or exclude the seller's liability for death or personal injury, any fraud or for any other liability which it is not permitted to limit or exclude by operation of law.

11.10 The parties agree that in all the circumstances of the contract that the limitations of liability in this clause 11 are fair and reasonable taking into account the price payable by the buyer and the relative abilities of the parties to insure against the

potential losses that may arise.

12. Confidential information and intellectual property rights

12.1 All drawings, documents, confidential records, computer software and other information supplied by the seller, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the seller (or the third party) and that the buyer will not, without the written consent of the seller, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the goods in respect of which they are issued. In addition, any design right or copyright created in relation to the goods will vest in the seller where the goods are commissioned by the buyer, whether or not for a separate fee.

12.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the buyer relating to the goods must be notified immediately to the seller. If requested by the seller, the seller shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the seller thinks fit and the buyer will provide to the seller such reasonable assistance as the seller may request. The cost of any such proceedings will be borne by the seller.

13. Customer's drawings

13.1 The buyer shall be solely responsible for ensuring that all drawings, information,

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advice and recommendations given to the seller, either directly or indirectly by the buyer or by the buyer's consultants or advisers, are accurate, correct and suitable unless, and then only to the extent that, the seller agrees in writing to accept responsibility. Examination or consideration by the seller of such drawings, information, advice or recommendations shall not of itself limit the buyer's responsibility.

13.2 The buyer shall indemnify the seller from and against all actions, claims, costs and proceedings which arise due to the manufacture of goods by the seller being in accordance with drawings or specifications provided by the buyer if such drawings or specifications are inaccurate or contain design defects or if they infringe or are alleged to infringe a patent, copyright, registered design, design right or design copyright or other right of any third party. 13.3 The seller does not guarantee the suitability of materials or the design of goods made specially to the buyer's requirements and differing from the seller's standard specifications even if the purpose for which the goods are required is known to the seller.

13.4 The seller does not accept responsibility for the safe-keeping and condition of the buyer's samples, drawings, tools and the like whilst they are in the seller's possession whatever the circumstances may be in which they are lost, broken or damaged and the buyer should make its own arrangements to insure these items.

14. Insolvency & termination

14.1 If the buyer shall become bankrupt or shall

be deemed to be unable to pay its debts for the purposes of section 123 of the insolvency act 1986 or shall compound with its creditors or if a resolution shall be passed or proceedings shall be commenced for the administration or liquidation of the buyer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager shall be appointed of all or any part of its assets or undertaking, the seller shall be entitled to cancel the contract in whole or in part by giving written notice to the buyer, without prejudice to any other right or remedy available to the seller.

14.2 He buyer shall immediately notify the seller in writing if:-

14.2.1 There is any change in the ownership, management or control of the buyer;

14.2.2 There is any sale or transfer of a material part of the buyer's business or assets;

14.2.3 The buyer, being a sole trader, entering into partnership with others; or

14.2.4 The buyer, being a sole trader or a partnership, becomes incorporated or amalgamated with others.

14.3 If any of the events listed at clause 14.2 Occur any credit facilities granted by the seller shall automatically terminate and the balance of such account shall become immediately payable in full.

14.4 If any of the events detailed in clause 14.1 Occur, the seller reserve the right to terminate the warranty for certain products as shared in the seller's brochure at the

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date of the contract.

14.5 Should the buyer fail to notify the seller of the occurrence of any of the events listed in 14.2 Above the buyer shall be jointly and severally liable to pay all sums due to the seller in respect of goods and/or services supplied to the changed entity until the date that written notice is received by the seller.

14.6 The buyer shall be jointly and severally liable for all sums due to the seller in respect of goods and/or services supplied to any individual, partnership or other legal entity that makes use of the customer's credit account facility.

14.7 The seller may (without prejudice to its other rights or remedies) terminate or suspend the seller's performance of the whole or any outstanding part of the contract if the buyer fails to take delivery of or to pay for the goods on the date required or breaches any other term of contract, or if the customer is late in payment or performance under or otherwise breaches any other contract for the sale and purchase of goods or services between the buyer and the seller. The seller may also suspend deliveries while investigating any claim relating to prior deliveries (under any contract) of goods.

15. Force majeure

The seller shall be under no liability for any failure to perform any of its obligations under the contract if and to the extent that the failure is caused by act of god, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute, shortages

of labour or materials or breakdown of machinery or any other matter (whether or not similar to the foregoing) outside the control of the seller.

16. Attendance on site

If the seller attends, or arranges for an attendance to be made, at the buyer's premises or the premises of any third party for any reason connected with the contract, the buyer shall indemnify the seller in respect of all claims made or proceedings taken against the seller (and associated legal costs incurred by the seller) by any person, firm or company, including employees of the seller, or of the buyer or of any contractor employed by the buyer (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises.

17. Consumer protection act 1987 (the "act")

17.1 In circumstances in which the seller supplies goods to the buyer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the buyer or a third party then:-

17.1.1 The buyer shall immediately on demand produce for inspection by the seller copies of all written instructions, information and warnings to be supplied by the buyer in relation to the composite or other products, provided that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the seller of such instructions, information or

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warnings; and

17.1.2 The buyer shall indemnify, reimburse and compensate the seller for all losses and damages (including costs, expenses and charges for legal actions in which the seller may be involved) which the seller may incur, or have to bear, if any claim or claims shall be made against the seller, pursuant to the act or otherwise, relating to the composite or other products in circumstances in which the goods supplied by the seller are either (i) not the defective part of the composite or other product, or (ii) are only rendered the defective part or became a defective product by reason of acts or omissions of the buyer or a third party (including without limitation the supply of defective free issue materials), or (iii) are only rendered the defective part or became a defective product by reason of instructions or warnings given by the buyer or other supplier of the composite or other products or (iv) are supplied in accordance with a specification or drawings furnished by, or on behalf of, the buyer.

17.2 For the purposes of clause 17.1 Only, the word “defective” shall be interpreted in accordance with the definition of “defect” contained in part 1 of the act.

17.3 The buyer acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by the seller with the goods.

18. General

18.1 The contract is entered into between the seller and the buyer as principals and the buyer shall not be entitled to assign the

benefit or burden of it or of any interest in it (including but not limited to any guarantee) without the prior written consent of the seller. The seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.

18.2 If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable and the void provisions shall, where appropriate, be replaced by other provisions corresponding as closely as possible with the void provisions.

18.3 A failure by the seller to exercise, or a delay in exercising, any right or remedy under this agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the seller may otherwise have and no single or partial exercise of any right or remedy under this agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.4 Any waiver by the seller of a breach of any of the terms of this agreement or of any default under this agreement shall not be deemed a waiver by the seller of any subsequent breach or default and shall not affect the other terms of this agreement.

18.5 A person who is not a party to the agreement (a “third party”) shall have no rights pursuant to the contracts (rights of third parties) act 1999 (the “act”) to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the act is not affected.



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18.6 The parties agree that any disputes arising or in any way connected with the subject matter of this agreement (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and in the case of proceedings issued against the seller shall be subject to the jurisdiction of the English courts only.