

TERMS & CONDITIONS OF SALE

MOULDED FIBRE PRODUCTS LIMITED ('MFP')

These Terms & Conditions of Sale ('Terms') shall override any terms or conditions proposed or stipulated by the Buyer unless agreed to in writing by an authorised officer of MFP. Any order placed for MFP goods and/or equipment ('Products') by the Buyer and accepted by MFP in accordance with the Terms ('Contract') shall signify acceptance of these Terms and the signing by MFP of any of the Buyers documentation shall not be or imply any modification of these Terms. MFP employees or agents are not authorised to make any representations concerning the Products unless confirmed in writing by MFP.

1. QUOTATIONS

- (a) Prices and charges quoted are based on costs prevailing at the date of quotation and are not offers. If these costs increase before the date of delivery, MFP reserves the right to amend the prices and/or charges accordingly.
- (b) MFP reserves the right to refuse the acceptance by the Buyer of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn within such period. Quotations are deemed to be withdrawn unless so accepted within 30 days from their issuance date.
- (c) Prices quoted are for stipulated quantities and delivery rates only and do not necessarily hold good for other quantities or other delivery rates.

2. ORDERS

- (a) Orders placed by the Buyer are subject to acceptance by MFP. The Buyer may not cancel the order without the written consent of MFP.
- (b) MFP reserves the right to accept or refuse orders or to impose a handling charge for orders under the standard quantities or minimum loads as specified by MFP from time to time in MFP's price list and or sales literature.

- (c) MFP reserves the right (without prejudice to any other remedy) to cancel or suspend delivery of all or part of any order in the event of the commitments of the Buyer with MFP not being met, or if in the absolute opinion of MFP such commitments may or will not be met by the Buyer within a reasonable time.

3. DELIVERY

- (a) 'Delivery' shall mean the delivery of the Products by MFP whether by way of delivery by or for and on behalf of MFP, direct delivery by a supplier of MFP or other third party or otherwise.
- (b) MFP may effect Delivery by instalments in which case these Terms shall apply to each instalment as though a separate Contract and any failure or defect in any one Delivery will not entitle the Buyer to repudiate the Contract as a whole.
- (c) When Delivery in instalments is chosen by MFP, an invoice showing the price of the Products at the time of each shipment will be prepared by MFP and the Buyer shall pay the amount of this invoice within the terms stated from the time of Delivery.
- (d) For Products to be delivered to another territory the Buyer shall in good time and at the Buyers expense procure any necessary import permit and if required by MFP produce to MFP evidence of this prior to shipment. MFP shall be entitled to demand proof that the Products have been exported and to charge extra prices and claim damages when proof is not forthcoming that the Products have been exported in the condition as delivered by MFP.
- (e) Any dates quoted for Delivery of the Products are approximate only and MFP shall not be liable for any loss or damage whatever due to delay in Delivery of the Products howsoever caused. Time for Delivery shall not be of the essence of the Contract.
- (f) If MFP fails to Deliver the Products for any reason (other than any cause beyond MFP's reasonable control or the Buyer's fault) and MFP is accordingly liable to the Buyer, MFP's liability shall be strictly 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 of the Products. No claims for other and/or consequential loss or damage shall be allowed in connection with any such non-delivery.

- (g)** If the Buyer fails to take Delivery of the Products or fails to give MFP adequate Delivery instructions prior to the time stated for Delivery then, without prejudice to any other right or remedy available to MFP, MFP may at its option store the Products until actual Delivery and charge the Buyer for reasonable costs including insurance of storage.

In such circumstances it is hereby agreed but without limitation, that the Buyer shall fully indemnify and keep indemnified MFP from and against all costs, claims, damages, losses, liabilities and expenses (including loss of profit) incurred or suffered by MFP by reason of the failure by the Buyer to take Delivery or to give MFP adequate Delivery instructions.

- (h)** On Delivery the Buyer shall mark the delivery advice note with details of any shortages and/or damaged Products received and shall forthwith deliver to MFP a damage report signed by the Buyer in such form as MFP shall request. If the Buyer fails to deliver any such report then the correct quantity and quality of the Products shall be conclusively presumed to have been delivered and to be in all respects in accordance with the specification (where applicable) and, accordingly, the Buyer shall be deemed to have accepted and MFP shall be deemed to have delivered promptly the Products in question and MFP shall have no liability to the Buyer with respect to those Products or otherwise.

4. PRICES

- (a)** All prices shown on MFP's price lists are subject to alteration without notice and MFP reserves the right to invoice all Products at the prices ruling at the time of despatch or collection.

- (b) Unless otherwise stated in writing all prices for UK destinations are delivered prices and those for non UK destination are ex works. All prices are inclusive of packing but exclusive of VAT, duties or other government imposts all of which will be added as applicable to the prices.

5. ADDITIONAL CHARGES

- (a) The Buyer shall pay an additional price in respect of any alteration in design or specification made at the Buyers request including the cost of all design and other tools specially bought by or made by MFP for the purpose of the order and the Buyer shall indemnify MFP from and against all costs, claims, damages and expenses made against or incurred by MFP in connection with the settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any third party arising out of MFP's use of such specification. Such designs and tools shall be and remain the sole property of MFP.
- (b) MFP will charge the Buyer for pallets used for Delivery and left with the Buyer that are not in the CHEP scheme at the rate per pallet ruling at the invoice date. Credit will be given for usable pallets returned or offered in substitution.

6. PAYMENT

- (a) Invoices are payable without deduction, set off or counterclaim within the due date of payment as stated on MFP's invoice notwithstanding that the property in the Products may not have passed to the Buyer.
- (b) Time of payment shall be of the essence and, without prejudice to any other rights that MFP may have, failure of the Buyer to pay any invoice by the due date shall entitle MFP to treat such failure as a repudiation of any agreement for the granting of credit facilities between MFP and the Buyer. MFP shall be entitled to charge interest on all monies due at the rate of 2% per calendar month after as well as before commencement of proceedings for recovery of same on any unpaid balance that remains outstanding.
- (c) Payment for sales delivered to another territory will be by irrevocable letter of credit confirmed on a London clearing bank arranged for payment in full against shipping documents, airway bill, air parcel post receipt etc. All bank charges are payable by the Buyer.

- (d) MFP shall be absolutely entitled to appropriate at anytime any payment made by the Buyer towards such of the Buyers liabilities with MFP or any of the group of companies of which MFP is a member.

7. OWNERSHIP AND RISK

- (a) Risk of any loss or damage to the Products from whatsoever cause arising shall be borne by the Buyer as from the time of Delivery of the Products to the Buyer or to any person to whom Products are delivered at the request of the Buyer which ever event shall occur first.

- (b) The whole right, title and interest, both legal and equitable in and to the Products shall remain with MFP and the Buyer shall keep the Products as MFP's fiduciary agent and bailee properly stored, protected and insured in such a way that they are identifiable as the property of MFP and are separate from all goods of the Buyer until MFP have received cleared payments in full of the price of the Products and cleared payments in full of every other sum whatsoever which is due from the Buyer to MFP. Until that event the Buyer shall be entitled to use or re-sell the Products in the ordinary course of its business but shall account to MFP for the proceeds of sale or otherwise of the Products (whether tangible or intangible and including insurance proceeds) and shall hold such proceeds on trust, as fiduciary agent and bailee for MFP.

- (c) The right to use or re-sell the Products granted to the Buyer under the term of Term 7 (b):

- (i) may be terminated by MFP forthwith upon oral or written notice to the Buyer if the Buyer defaults in payment of any sum for more than seven days after such sums fell due; and

- (ii) shall automatically cease if a receiver is appointed over any of the assets of the Buyer or a petition is presented or notice is given of a resolution to wind up the Buyer or the Buyer is deemed unable to pay its debts as defined in the relevant acts of insolvency or (in the event of the Buyer being a sole trader or a partnership) a petition is presented for bankruptcy of the Buyer or any partner of the Buyer or if the Buyer shall make any composition with his creditors or if any distress execution or other process is levied or enforce upon or sued against all or any of the assets of the Buyer.

- (d)** Until such time as property in the Products shall pass to the Buyer and provided that the Products are still in existence and have not been re-sold, the Buyer shall upon the request being made by MFP deliver up the Products to MFP and if the Buyer fails to do so forthwith to enter upon the Buyer's premises or those of any third party where the Products are situated and re-posses any Products supplied to the Buyer by MFP. On the making of such a request the rights of the Buyer to use or re-sell the Products as set out in Term 7(b) shall cease.

- (e)** In the event that the Buyer has re-sold the Products in the ordinary course of business subject to any retention of title in favour of the Buyer and the Buyer defaults in payment or ceases to have any right to re-sell or use as referred to in Term 7(c)(i) and 7(c)(ii) above MFP shall have the right to require the Buyer to enforce its rights pursuant to or under such retention of title and all monies and/or goods recovered thereby by the Buyer shall to the extent of any liability of the Buyer to MFP, be held by the Buyer on trust for MFP, in the case of proceeds in a separate bank account and in the case of goods separate and distinct, properly stored, protected and insured.

- (f)** As all or any of the Products or some part constituent of them may have been purchased by MFP under a contract containing a provision reserving title or other property rights therein to the vendor thereof MFP shall be liable to transfer to the Buyer only such title as MFP may have in the Products.

- (g)** MFP may in its absolute discretion assign to any third party whatsoever any debt outstanding and due from the Buyer without reference to the Buyer.

- (h)** The Buyer shall not be entitled to pledge or in any way charge by way of security for an indebtedness any of the Products which remain the property of MFP but if the Buyer does so all monies owing by the Buyer to MFP shall (without prejudice to any other right or remedy of MFP) forthwith become due and payable.

8. LIMITATION OF LIABILITY

- (a) MFP shall be relieved of all liability for obligations incurred to the Buyer whenever and the extent to which the fulfilment of such obligation is prevented, frustrated or impeded directly or indirectly in consequent of or by reason of events beyond MFP's control including but not limited to act of God, war, hostilities, riot, civil commotion or any governmental restriction order or regulation or statutory prohibition, and the specified Delivery date shall be extended for a period equal to the delay caused by such events. If the period of delay extends beyond a reasonable period MFP shall be entitled to cancel any obligations with the Buyer by giving notice in writing and until MFP cancels any arrangement to extend the time of MFP's performance by a period equivalent to that during which performance has been prevented by any of the said circumstances without incurring any liability to the Buyer for any loss arising from cancellation or suspension.
- (b) MFP shall not be liable for any breach of the warranties, representations and undertakings given under these Terms:
- (i) unless the Buyer has paid MFP all monies payable on or by the date for payment;
 - (ii) unless the Buyer gives written notice of alleged non compliance or alleged defect within two days of its discovery and in any event not later than six months from date of delivery;
 - (iii) unless the Buyer gives MFP an opportunity to inspect the Products;
 - (iv) unless the Buyer makes no further use of the relevant Products;
 - (v) if the Products have been modified altered or otherwise tampered with in any way other than by a duly authorised representative of MFP; and
 - (vi) if the defects arise from the Buyer's misuse wilful damage, neglect, carelessness or lack of proper care, failure to follow any instructions given by MFP or other commotion or disturbance or whatever nature whether affecting the Products directly or indirectly as a result of any such matter affecting the place where the Products are situate or if and to the extent the Products have been produced from specifications produced by or on behalf of the Buyer.

- (c) The Buyer is deemed to have inspected the Products on Delivery and unless the delivery advice note is marked with details of any shortage, loss or damage the correct quantity and quality of the Products will be deemed to have been delivered and no claim based on any defect in the quantity or damage to the quality of the Products which is made subsequently will be considered.
- (d) If a valid warranty claim shall arise which is properly notified to MFP in accordance with these Terms (save where the Buyer and MFP have agreed in writing a damages allowance in which case MFP will have no further liability to the Buyer) MFP will at its option and expense either:
- (i) replace the non-complying or defective Products as soon as reasonably practicable; or
 - (ii) require the Buyer to retain the Products and grant to the Buyer an appropriate allowance against the contract price; or
 - (iii) take back the non-complying or defective Products and refund the appropriate part of the contract price; or
 - (iv) take such steps as MFP considers necessary to make the Products comply.
- Any performance of any of the above options shall constitute discharge of MFP's entire liability under the Terms.
- (e) In cases where the Products are not manufactured by MFP, MFP shall transmit to the Buyer insofar as it is possible for it so to do the benefits of any guarantees given by the manufacturers of the Product to MFP and in respect of such Product MFP's liability to the Buyer shall not exceed the liability which the manufacturers of the Products have to MFP. Parts which were not supplied by MFP but fitted to the Product are not covered by the warranty.
- (f) Statements as to output, power capacity or otherwise contained in any drawing catalogue or specification or other documents issued by MFP shall not be regarded as forming part of any undertakings entered into with the Buyer unless such statement is specifically confirmed in writing by MFP.

- (g) Except in respect of the death or personal injury caused by MFP's negligence, MFP shall not be liable to the Buyer by reason of any misrepresentation or breach of an implied warranty, condition or other term or breach of any duty at common law or under express terms of the Contract for any direct loss or expense or any indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer and/or for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever, (and whether caused by negligence of MFP, its employees or agents or otherwise), which arise out of or in connection with the supply of the Products or their use or re-sale by the Buyer, except as expressly provided in these Terms.
- (h) The Buyer shall indemnify MFP against all claims and demands made upon MFP for any consequential loss or damage arising out of or in connection with the sale of the Products by MFP to the Buyer.
- (i) All other conditions and warranties expressed and implied by statute, common law or otherwise are hereby excluded except those which by statute may not be excluded provided that nothing in these Terms shall affect the statutory rights of a Buyer dealing as a consumer.

9. TERMINATION CONSEQUENCES

- (a) In the event of the Contract being determined in accordance with these Terms the Buyer shall pay MFP at the contract rate for all work done, materials used and products purchases and/or manufactured to the Buyer's design or specification and/or purchase or manufactured for the purpose of the Contract and for all Products delivered prior to termination and shall indemnify MFP against any resulting loss, (including loss of profit and other consequential loss) damage or expense incurred by MFP in connection with the non-performance of the Contract.
- (b) MFP shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of the Contract and the determination of the Contract shall not affect or prejudice such rights and remedies and the Buyer shall be and remain liable to perform all outstanding liabilities under the Contract notwithstanding that MFP may have exercised one or more of the rights and remedies against it.

10. OTHER MATTERS

- (a) Any computer programmes or software incorporated in the Products and delivered to the Buyer constitute proprietary information of MFP and title thereto is not transferred to the Buyer. The Buyer acquires only a non exclusive licence to use such computer programmes or software with the Products providing the Buyer agrees not to copy or allow others to copy such computer programmes or software, agrees not to remove any proprietary markings including copyright notices and agrees that its non exclusive licence to use such computer programmes or software shall be transferable only in connection with the sale or other disposition of the Products.
- (b) Where stands are provided on loan for merchandising they must only be used for merchandising Products in MFP packaging.
- (c) If the Buyer re-sells or otherwise supplies the Products to any third party such Products must be re-sold or supplied in the packaging in which they were purchased from MFP and with any and all identification or other Product numbers and/or marks unamended and clearly shown unless otherwise agreed in writing by MFP.
- (d) The Buyer shall maintain a proper and efficient procedure for reporting and dealing with consumer complaints but shall not settle any such complaints or otherwise compromise the position of MFP in respect thereto without MFP's prior written consent. Full details of all such complaints must be referred to MFP forthwith upon notification together where possible with the packaging and/or batch code of the relevant Products.
- (e) No representation or statement not expressly contained in these Terms or incorporated hereby by reference to a written document duly authorised by MFP shall be binding upon MFP as a warranty or otherwise nor shall anything be implied from any such representation or statement.
- (f) The unenforceability or invalidity of any legal effect of any provision or sub provision of these Terms shall not affect the validity or enforceability or legal effect of any other provision or sub provision of these Terms.
- (g) No relaxation forbearance delay or indulgence by MFP in enforcing any of the terms and conditions of these Terms or the granting of time to the Buyer or otherwise shall prejudice affect or restrict MFP's rights and powers hereunder nor shall any waiver by MFP of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

- (h) The Buyer shall not assign any benefit under a contract governed by these Terms without the consent in writing of MFP which may if given be on such terms as to guarantee or indemnity or otherwise as MFP thinks fit.
- (i) The headings do not form part of these Terms and should not be taken into account in their interpretation.

11. NOTICES

- (a) Each notice to be given hereunder shall be in writing addressed to the other party's main business address or such addresses as one party shall notify in writing to the other for this purpose.
- (b) Any notice shall be deemed given if left at the proper address upon delivery if delivered by hand during normal business hours, 48 hours after having been posted by first class prepaid post in an envelope addressed to the proper address and on the same business day next following the day of transmission if transmitted by facsimile or telex.

12. LAW

These Terms and all matters pertaining thereto shall be governed by and construed in accordance with the laws of England(Ireland) and the Buyer submits to the jurisdiction of the English(Irish) courts in relation to any claim thereunder but MFP may enforce these Terms and any contract resulting therefrom in any part of the world.