

The Lawton Tube Co. Ltd. Standard Conditions Of Sale

The buyer's attention is in particular drawn to the provisions of condition 12.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer:	The person, firm or company who purchases the Goods from the Company.
Company:	The Lawton Tube Company Limited (CRN 00165130)
Contract:	Any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
Delivery Point:	The place where delivery of the Goods is to take place under condition 4.
Goods:	Any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer:-

- The Buyer shall supply such specification within sufficient time to enable the Company to complete delivery of the goods by the estimated delivery date.
- The Buyer shall indemnify the Company against all loss damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements.
- The Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or other specification supplied by the Buyer

4. RAW MATERIALS AND SPECIAL TOOLS

4.1 Contracts and orders are accepted subject to the Company being able to obtain at all necessary times the raw materials and any special tools required to execute the order.

4.2 Any dies or tools made or obtained specially for an order remain the Seller's property, even when the Buyer has been charged with the cost or part cost.

5. DELIVERY

5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.

5.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

5.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

5.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

5.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

5.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

5.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5.10 Where the Buyer has given firm instructions for the manufacture or delivery of Goods and subsequently requests the Seller to defer delivery, any Goods completed will be invoiced on completion, holding and storage charges at the reasonable cost of storage including delivery will be invoiced subsequently when applicable.

6. NON-DELIVERY

6.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.2 The Company shall not be liable for any loss or non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice and a complete claim to the Company (and to the carrier if applicable) of the non-delivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. EXPORT ORDERS

7.1 Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of "Incoterms", the definition of meaning given by the Incoterms in force at the date when the contract is made, shall have the same meaning in these conditions or any contract for the sale or supply of Goods by the Company to the Buyer, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

7.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

8. RISK/TITLE

8.1 Risk shall pass to the Buyer so that the Buyer is responsible for all loss, damage or deterioration to the Goods:

- If the Company delivers the Goods by its own transport at the time when the Goods or a relevant part thereof arrive at the place of delivery or,
- In all other circumstances at the time when the Goods or a relevant part thereof leave the premises of the Company whether or not the Company arranges transport and where the Goods are delivered by carrier any claims for loss or damage in transit must be made by the Buyer against the carrier in accordance with the carrier's conditions.

8.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- the Goods; and
- all other sums which are or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- hold the Goods on a fiduciary basis as the Company's bailee;
- store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

8.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases or threatens to cease to trade; or
- the Buyer encumbers or in any way charges any of the Goods.

8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 8.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 8.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.
- 9. PRICE**
- 9.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the order acknowledgement or if no price is stated the Company's price list published on the date of delivery or deemed delivery.
- 9.2 Notwithstanding clause 9.1, where the date for delivery of the Goods (or any part of them) is more than three months after the date of the order acknowledgement, the Company reserves the right to increase the price for the Goods to take account of any increase in the price of copper on the London Metal Exchange between the date of acknowledgement and the date of delivery.
- 9.3 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
- 10. PAYMENT**
- 10.1 Subject to condition 10.4 and to any terms for payment contained in the order acknowledgement, payment of the price for the Goods is due in pounds sterling.
- 10.2 Time for payment shall be of the essence.
- 10.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 10.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 11. QUALITY**
- 11.1 The Goods shall be manufactured and supplied in accordance with the description contained in the Company's specification (if any) and shall be of normal industrial quality.
- 11.2 The Company may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of fitness for the purpose of the Goods.
- 11.3 The Company shall not be liable for a breach of any express or implied warranty unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 3 days of the date of delivery followed by a complete claim in writing within 5 days of the date of delivery; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer permits the Goods to be collected by the Company or (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there. Where Goods are accepted from the carrier concerned without being checked, the delivery book of the carrier concerned must be signed "not examined".
- 11.4 The Company shall not be liable for any breach of warranty if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 11.5 Subject to condition 11.3 and condition 11.4, if any of the Goods do not conform with any warrant the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 11.6 If the Company complies with condition 11.5 it shall have no further liability for a breach of warranty in respect of such Goods.
- 12. LIMITATION OF LIABILITY**
- 12.1 Subject to condition 4, condition 6 and condition 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
- (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation.
- 12.4 Subject to condition 12.2 and condition 12.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 13. ASSIGNMENT**
- 13.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 13.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 14. FORCE MAJEURE**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or import or export regulations or embargoes, power failure or breakdown in machinery.
- 15. NOTICE OF TERMINATION OR PARTIAL DELIVERY**
- In the event of an outbreak of hostilities (whether war is declared or not) in which Great Britain is involved, or in the event of national emergency, or if the Company's works should become whether directly or indirectly so engaged on the Government orders or orders under priority directions as to prevent or delay work on other orders, the Company shall be entitled at any time, on notice to the Buyer, to make partial deliveries only or to determine the contract, without prejudice in any case to rights accrued in respect of deliveries already made.
- 16. TERMINATION OF CONTRACT**
- Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:-
- 16.1 The Buyer fails to make any payment of the purchase price on the due date or commits any other breach of the terms of the contract or
- 16.2 Any of the events or circumstances referred to in condition 8.5 shall occur
- 17. INDEMNITY**
- The Buyer will indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any letters patent or registered design or copyright.
- 18. CANCELLATION**
- No order or contract may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit) costs, including the costs of all labour and materials used, damages charges and expenses incurred by the Company as a result of cancellation.
- 19. GENERAL**
- 19.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 19.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 19.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 20. COMMUNICATIONS**
- 20.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:
- (a) (in case of communications to the Company) to its registered office or in the case of fax or email to the relevant fax number or email address specified in the order acknowledgement or such changed number or address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract and in the case of fax or email to the relevant fax number or email address specified in any such document or such other address or fax number as shall be notified to the Company by the Buyer.
- 20.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- (d) If sent by email, 3 hours after an email is sent and in proving the service of any notice it will be sufficient to prove that the email was sent to the specified email address of the addressee.