

PHOENIX SAFE COMPANY LIMITED – STANDARD TERMS AND CONDITIONS OF SALE

Your attention is drawn to the clauses in these Conditions in bold type which exclude or limit Phoenix Safe Company Limited's liability.

1. DEFINITIONS

1.1 In these Conditions:

'Contract': means the contract for the supply of the Goods;

'Customer': means the person for whom Phoenix has agreed to provide the Goods in accordance with these Conditions;

'Delivery Address': means the delivery address given by the Customer at the time when the order is placed;

'Phoenix': means Phoenix Safe Company Limited, a company registered in England (registration no. 8698080) whose principal place of business is at Apex House, 1 Orrell Mount, Bootle, Liverpool L20 6NS;

'Goods': means the goods to be supplied by Phoenix to the Customer pursuant to the Contract;

'Writing': includes facsimile transmissions and e-mails.

1.2 In these Conditions words importing gender include each other gender; references to persons include bodies corporate, firms and unincorporated associations; and the singular includes the plural and vice versa.

1.3 The headings in these Conditions are included for convenience only and shall not affect their interpretation.

1.4 References to **'sterling'** and the sign **'£'** mean pounds sterling in the currency of the United Kingdom provided that if, following the introduction of the Euro, pounds sterling ceases to exist as the currency of the United Kingdom, then all references in the Contract to **'pounds sterling'** and **'£'** shall be construed as references to the Euro at the conversion rate applicable at the close of the latest day, being a day other than a Saturday or Sunday or public holiday in England, before the day on which pounds sterling ceased to exist.

1.5 References to all or any part of any statute or statutory instrument include any statutory amendment, modification or re-enactment in force from time to time and references to any statute include any statutory instrument or regulations made under it.

2. BASIS OF AGREEMENT

2.1 Phoenix shall provide the Goods to the Customer subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions put forward by the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the Customer and an authorised representative of Phoenix.

2.3 Phoenix's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by an authorised representative of Phoenix in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations that are not so confirmed.

2.4 Phoenix may at any time correct without liability any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by it.

2.5 The Customer acknowledges that, before entering into the Contract for the purchase of the Goods from Phoenix, it has expressly represented and warranted to Phoenix that it is not insolvent and there are no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or entitle any person to petition for its winding up or exercise any other right over or against the Customer or its assets.

3. QUOTATIONS AND ORDERS

3.1 Any quotation provided by Phoenix to the Customer is valid for a period of thirty days only from the date when it was despatched by Phoenix to the Customer, or such shorter period as may be stipulated on the quotation.

3.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase the Goods pursuant to these Conditions. Such order shall be deemed to be accepted by Phoenix at the time of receipt of such order unless non-acceptance is notified to the Customer within fourteen working days.

3.3 The Customer is responsible to Phoenix for ensuring the accuracy of the terms of any order and for giving Phoenix any necessary information relating to the Goods within a sufficient time to enable Phoenix to perform the Contract in accordance with its terms.

3.4 Subject to clauses 5.2, 5.3 and 9 below, no order which has been accepted by Phoenix may be cancelled by the Customer except with the agreement in Writing of Phoenix, signed by a duly authorised representative of Phoenix, and on terms that the Customer shall indemnify Phoenix in full against all loss, costs, damages, charges and expenses incurred by Phoenix.

3.5 Subject to clause 3.2 Phoenix reserves the right to accept or refuse orders. Phoenix also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of the Customer's obligations to Phoenix (including in particular, but without limitation, payment on the due dates for Goods delivered) not being performed in accordance with their terms.

3.6 The Customer is responsible for ensuring that the Goods comply with any applicable statutory and regulatory requirements for any country, except the United Kingdom, in which the Goods may be in transit at any time or are to be used or sold.

3.7 The Contract is subject to the Customer's rights of cancellation as set out in clauses 5.2, 5.3 and 9 below.

3.8 Phoenix reserves the right to make any changes to the Goods which are required to conform with any applicable safety or other statutory requirements, which do not materially affect their quality or performance.

3.9 All illustrations, drawings and general descriptions contained in Phoenix's price lists, advertisements, catalogues, brochures or other advertising material or literature (including but not limited to items accessible via the internet) or otherwise provided to the Customer are intended for general guidance only and shall not be binding on Phoenix and are only approximate indications of the type, size or colour of the Goods quoted for and sales of such Goods shall not be by reference thereto.

3.10 The packaging of the Goods is at the sole discretion of Phoenix who shall have the right to pack the Goods in such manner and with such materials and in such quantities as it thinks fit.

4. SAMPLES

4.1 Phoenix may at its discretion submit samples of the Goods to the Customer for approval. Phoenix shall not be liable for any errors not corrected by the Customer in respect of such samples.

4.2 Phoenix shall be entitled to increase the price of the Goods to reflect any change in Phoenix's instructions following submission of samples, including (without limitation) the cost of further samples.

5. DESCRIPTION AND PRICE OF THE GOODS

5.1 The description and price of the Goods shall be as contained in Phoenix's quotation or where no price has been quoted (or a quotation is no longer valid) the price listed in Phoenix's published price list, advertisements, catalogues, brochures or other advertising material or literature current at the date of acceptance of the order.

5.2 The Goods are subject to availability. If on receipt of the Customer's order, the Goods ordered are not available in stock, Phoenix will inform the Customer as soon as reasonably practicable and offer the Customer the option of either reconfirming the Customer's order to be delivered at a future date or cancelling the order. If the Customer cancels, Phoenix will refund or recredit the Customer for any sum that has been paid by the Customer for the Goods.

5.3 Every effort is made to ensure that prices contained in Phoenix's price lists or in its current catalogue are accurate at the time the Customer places an order. If an error is found, Phoenix will inform the Customer as soon as reasonably practicable and offer the Customer the option of either reconfirming the Customer's order at the correct price or cancelling the order. If the Customer cancels, Phoenix will refund or recredit the Customer for any sum that has been paid by the Customer for the Goods.

5.4 The price of the Goods is inclusive of transport to the Delivery Address. Any change to the Delivery Address may attract additional charges.

5.5 The price of the Goods is, where applicable, exclusive of value added tax.

6. TERMS OF PAYMENT

6.1 Subject to any special terms agreed in Writing between the Customer and Phoenix, and subject always to Phoenix's right to claim immediate cash payment, Phoenix may invoice the Customer for the price of the Goods at any time on or after delivery in accordance with 7.1 unless the Goods are to be collected by the Customer or the Customer fails to take delivery of the Goods, in which event Phoenix shall be entitled to invoice the Customer for the price at any time after Phoenix has notified the Customer that the Goods are ready for collection or (as the case may be) Phoenix has tendered delivery of the Goods. Time for payment shall be of the essence of the Contract.

6.2 The Customer shall pay the price of the Goods within thirty days of the end of the month in which the Customer receives Phoenix's invoice, or as otherwise agreed in Writing between the Customer and Phoenix, without any set-off or other deductions whatsoever, by cheque, banker's draft, BACS or cleared funds / any method notified to the Customer by Phoenix at the time the order is placed. Letters of credit will be accepted only by prior agreement in Writing / Where payment is to be by letter of credit, the Customer will be liable for any discounting or bank charges incurred and/or any bank charges incurred in processing a payment from the Customer.

6.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to it, Phoenix may:

6.3.1 cancel the Contract and suspend any further deliveries to the Customer;

6.3.2 appropriate any payment made by the Customer to such invoices as Phoenix may think fit (notwithstanding any purported appropriation by the Customer);

6.3.3 charge the Customer interest (both before and after judgment) on the amount outstanding on a daily basis at the rate of 5% per annum above the base rate of HSBC Bank plc from time to time until all outstanding amounts are paid in full; and/or

6.3.4 bring an action for the invoice value notwithstanding that property in the Goods has not passed to the Customer.

6.4 If the recovery of any sums outstanding from the Customer to Phoenix is passed to a debt collection agency, the Customer shall pay on an indemnity basis Phoenix's costs incurred in instructing such debt collection agency and all legal and other costs ancillary thereto.

7. DELIVERY AND PERFORMANCE

7.1 Delivery of the Goods shall be made by Phoenix to the Delivery Address.

7.2 Subject to clause 7.3, if delivery cannot be made to the Delivery Address, Phoenix will inform the Customer as soon as possible, and refund or recredit the Customer for any sum that has been paid by the Customer for delivery.

7.3 If delivery of the Goods is for any reason delayed as a result of the actions, inactions or negligence of the Customer, including, without limitation, there being no person at the Delivery Address who is competent to accept delivery of the Goods, the Customer will be notified of an alternative delivery date or a place to collect the Goods and the Customer will indemnify Phoenix in respect of any loss, costs, damages, charges and expense which it may sustain in consequence thereof.

7.4 Every effort will be made to deliver the Goods as soon as reasonably practicable after the Customer's order has been accepted, and in any event within 30 days of such acceptance. However, any dates quoted by Phoenix for delivery of the Goods are approximate only and Phoenix shall not be liable for any delay in delivery of the Goods howsoever caused. In this case, Phoenix will inform the Customer as soon as reasonably practicable.

7.5 Subject to Phoenix giving the Customer prior reasonable notice Phoenix may deliver the Goods to the Customer in advance of the quoted delivery date.

7.6 Where Phoenix is entitled to deliver the Goods by instalments, each delivery shall constitute a separate contract and failure by Phoenix to deliver one or more instalments in accordance with the Contract shall not entitle the Customer to treat the Contract as a whole as repudiated.

7.7 Phoenix reserves the right to withhold delivery of the Goods to the Customer at any time when the Customer has exceeded, or upon delivery would exceed, any credit limit with Phoenix either in relation to the Goods or otherwise or if Phoenix has any doubt about the continuing creditworthiness of the Customer.

7.8 A delivery or collection note signed by or on behalf of the Customer, or the Customer's customer, agent or duly authorised representative, is deemed to be evidence of the delivery or collection of the Goods specified therein.

8. RISK AND PROPERTY

8.1 Risk of damage to, or loss of, the Goods shall pass to the Customer upon delivery of the Goods at the Delivery Address or (as the case may be) when the Goods are collected.

8.2 Notwithstanding delivery and/or the passing of risk in the Goods, the Goods shall remain the property of Phoenix until whichever shall be the later of (a) delivery of the Goods at the Delivery Address and (b) the Customer having paid to Phoenix all sums outstanding under the Contract and all other contracts between the parties.

8.3 Until such time as title in the Goods passes to the Customer:

8.3.1 the Customer shall hold the Goods, properly protected and insured, in a fiduciary capacity as bailee for Phoenix and accordingly shall keep the Goods separate from other goods on the premises of the Customer and clearly marked as being the property of Phoenix;

8.3.2 Phoenix shall be entitled at any time to require the Customer to deliver up the Goods and if the Customer fails to do so Phoenix shall be entitled to enter upon the premises of the Customer or any third party where the Goods are stored and repossess them; and

8.3.3 the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Phoenix, but if the Customer does so all monies owing by the Customer to Phoenix shall (without prejudice to any other right or remedy of Phoenix) immediately become due and payable.

8.4 The Customer has the right to sell the Goods but the proceeds of resale (or such part of the proceeds that is equal to the amount owed by the Customer to Phoenix) shall be held in a separate account to Phoenix's order and on trust for Phoenix until all sums referred to in clause 8.2 have been paid in full and the Customer shall assign to Phoenix any rights or claims that the Customer may have against any sub-purchaser.

8.5 The Customer's right to possession of the Goods supplied by Phoenix shall terminate if the Customer is declared bankrupt or makes any proposal to the Customer's creditors for any composition or voluntary arrangement or, if the Customer is a company, an administrator, receiver or liquidator is appointed in respect of it, its business or any of its assets.

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

8.7 It shall be the responsibility of the Customer (and not the responsibility of Phoenix) to obtain all consents necessary for the installation and storage of any Goods and to satisfy itself that the installation and storage of such Goods is in accordance with the provisions of any relevant by-laws, regulations or statutes.

9. YOUR RIGHT OF CANCELLATION

9.1 The Customer has the right to cancel the Contract at any time up to the end of thirty days after the Customer has received the Goods.

9.2 To exercise the right of cancellation, the Customer must give written notice to Phoenix by hand or post, fax or email, at the address, fax number or email address shown in the Contract, giving details of the goods ordered and (where appropriate) their delivery. The Customer must obtain a goods return note (GRN) number within thirty days of the delivery date, this number can be obtained by contacting our customer service team on 0151 944 6444.

9.3 If the Customer exercises its right of cancellation after the Goods have been delivered to it, the Customer will be responsible for returning the Goods to Phoenix at its own cost. The Goods must be returned to the address shown in the Contract. The Customer must take reasonable care to ensure the Goods are not damaged in the meantime or in transit.

9.4 Once the Customer has notified Phoenix that it is cancelling the contract, Phoenix will refund or re-credit the Customer any sum that has been paid by the Customer or debited from the Customer's credit card for the Goods, less carriage charges, within thirty days of return of the Goods by the Customer to Phoenix.

9.5 If the Customer does not return the Goods as required, Phoenix will charge the Customer a collection charge equal to the delivery charge plus a 10% re-stocking charge. These charges will be deducted from the refund / re-credit in (9.4).

10. **WARRANTIES AND LIABILITY**

- 10.1 All Goods supplied by Phoenix are warranted free from defects for a minimum of 12 months from the date of supply.
- 10.2 This warranty does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by the Customer or any third party, use otherwise than as recommended by Phoenix, failure to follow Phoenix's Instructions, or any alteration or repair carried out without Phoenix's approval in Writing.
- 10.3 Advice of damage, delay, non-delivery or partial loss of Goods in transit, or that the Goods supplied to the Customer develop a defect while under warranty, or that the Customer has any other complaint about the Goods, must be notified to Phoenix in Writing within 3 days of delivery or performance (or, in the case of non-delivery, within 28 days of despatch of the Goods) and any such claim must be made in Writing to Phoenix within 7 days of delivery or performance (or, in the case of non-delivery, within 42 days of despatch). All other claims must be made in Writing to Phoenix within 14 days of delivery or performance. Subject to clause 10.6 below, Phoenix shall not be liable in respect of any claim unless these requirements have been complied with except in any particular case where the Customer proves that (i) it was not possible to comply with the requirements and (ii) advice (where required) was given and the claim made as soon as reasonably possible.
- 10.4 Phoenix shall not be liable for indirect loss or third party claims occasioned by delay in delivering the Goods or for any loss to the Customer arising from such delay whether as a result of Phoenix's negligence or otherwise.
- 10.5 Without prejudice to clause 10.2 above but subject to clause 10.6 below, where the Goods are defective for any reason, including negligence, Phoenix's liability (if any) shall be limited to:
- 10.5.1 replacing the Goods;
- 10.5.2 rectifying such defects at its own expense; or
- 10.5.3 granting the Customer a full or partial refund or credit note for the appropriate part of the purchase price; in which case Phoenix shall have no further liability to the Customer.
- 10.6 Nothing in these Conditions shall exclude Phoenix's liability for death or personal injury as a result of its negligence.
- 10.7 Subject to clause 10.6 above, Phoenix shall not be liable to the Customer 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, for:
- 10.7.1 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 its negligence, employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or the Services or their use or, except as expressly provided in these Conditions; and/or
- 10.7.2 any sum exceeding £500,000 in respect of any single incident or series of connected incidents.

11. **FORCE MAJEURE**

Phoenix shall not be liable for any failure or delay to carry out the Contract for any reason beyond its reasonable control, including (without limitation), act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or resulting from any inability to procure materials required for the performance of the Contract.

12. **INSOLVENCY OF CUSTOMER**

If:

- 12.1 the Customer makes any voluntary arrangement with its creditors or (being an individual) becomes bankrupt, (being a firm) any of its partners becomes bankrupt or (being a company) it becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction in such manner that the resulting company is bound by and assumes the obligations imposed on the Customer by the Contract);
- 12.2 an encumbrancer takes possession, or a receiver, is appointed of any of the property or assets of the Customer;
- 12.3 the Customer ceases, or threatens to cease, to carry on business; or
- 12.4 Phoenix reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then, without prejudice to its other rights and remedies under these Conditions and/or at law, Phoenix shall be entitled to cancel the Contract and/or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for, the price of them shall become immediately due and payable.

13. **GENERAL**

- 13.1 The Contract is personal to the Customer who may not assign, transfer, declare on trust or otherwise dispose of any of its rights under the Contract to any other person without the prior consent of Phoenix in Writing signed by its duly authorised representative.
- 13.2 With the exception of clause 13.6, nothing in these Conditions is expressly or impliedly intended to confer on any third party any right to enforce any of its provisions pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and addressed to Phoenix at its registered office and to the Customer at the address given on its order or to such other address as may at the relevant time have been notified to the party giving notice pursuant to this provision.
- 13.4 No waiver by Phoenix of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.5 Any provision of these Conditions which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of these Conditions.
- 13.6 Phoenix may at its discretion perform its obligations and exercise its rights under the Contract through any other person and any such sub-contractors, agents and servants shall have the benefit of these Conditions.
- 13.7 The Contract is subject to the laws of England and Wales and the Customer agrees for the benefit of Phoenix to submit to the exclusive jurisdiction of the English Courts.