

**1. Scope**

These Conditions of Sale apply to all contracts between Armacell and the Buyer for sale and purchase of the Products (the "Contract") to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to Armacell. These Conditions shall not be modified unless with the prior written approval of an officer of Armacell. These Conditions shall prevail over any and all of the Buyer's general and specific terms and conditions of purchase and shall supersede all previous communications with the Buyer, either oral or written. Any concession made or latitude allowed by Armacell to the Buyer shall not affect the strict rights of Armacell under the contract. If in any particular case any of these Conditions shall be or be held to be invalid or shall not apply to the contract the other Conditions shall continue in full force and effect.

**2. Coming into effect**

The contract between Armacell and the Buyer shall come into effect when the Buyer places an order upon these Conditions and it is accepted by Armacell.

**3. Prices**

- (a) The prices of the Products shall be the Armacell list price current at the date of the order
- (b) Prices are subject to change without notice [to take account of any variation in Armacell's costs]. The Products will be invoiced at the price ruling on the date of despatch from Armacell's premises. For any order for delivery at one place at one time where the net value is less than £150.00 a charge of £50.00 will be added to cover carriage and administrative charges. VAT will be added as a separate item of account. Quantity terms current from time to time are available on request.
- (c) Unless otherwise stated on Armacell's invoice, payment by the Buyer must be made before the end of the month following the month in which Armacell's invoice is dated.
- (d) Unless otherwise agreed in writing, Armacell operate to the following payment terms:
  - (i) Receipt of payment in full on or before the 15th day following the date of invoice shall be subject to a 2% discount.
  - (ii) Receipt of payment in full on or before the 20th day of the month following the date of the invoice shall be subject to a 1.5% discount.
  - (iii) Net payment shall be made by the end of the month following the month of invoice. These payment terms shall appear on Armacell's invoices as follows: "2%-15 days, 1.5%-20th proximo, net-30th proximo".
- (e) Without prejudice to any other rights it may have, Armacell shall be entitled (both before and after any judgment) to charge interest on any overdue amounts at 5% over the base lending rate, from time to time, of Barclays Bank PLC.
- (f) The price of the Products shall be due in full to Armacell in accordance with the terms of the contract and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- (g) The time of payment shall be of the essence of the contract.

**4. Additional costs**

The Buyer shall indemnify Armacell in respect of any loss, cost or expense incurred by Armacell as a result, directly or indirectly, of the Buyer's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

**5. Intellectual property**

The Buyer shall indemnify Armacell against all costs, claims, losses, expenses and damages incurred by Armacell or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Products if made to the specification or special requirements of the Buyer.

**6. Delivery and Passing of Risk and Title**

- (a) Delivery shall be completed when made to the place of delivery in mainland United Kingdom, Northern Ireland or the Republic of Ireland, specified by the Buyer at the time of order, at which time all risks or loss or damage to the Products shall pass to the Buyer who shall be solely responsible for their custody and maintenance. Upon delivery the Buyer shall sign the Armacell delivery receipt notice. The unloading of the Products at the place of delivery and subsequent storage is at the sole risk of the Buyer. Delivery elsewhere is subject to agreement by Armacell and an additional delivery charge. No part cartons will be supplied.
- (b) Title to the Products shall only pass to the Buyer after full payment for all goods sold by Armacell to the Buyer under the contract and any other contract between Armacell and the Buyer and on any other account whatsoever has been made to Armacell. The Buyer may sell the Products in the normal course of business. However, in the event of any resale by the Buyer of the Products Armacell's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to Armacell and until such assignment shall be held on trust in a separate identified account for Armacell by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as Armacell's moneys. Until full payments for all such goods, and in addition to any other remedy available at law, Armacell has the right, at any time without notice for all goods sold by Armacell to the Buyer, to take possession of and re-sell the Products, and for that purpose the Buyer authorises Armacell to enter its premises and agrees to store the Products in such a way that they are readily identifiable as the property of Armacell.
- (c) Pending payment of the full purchase price of the Products the Buyer shall at all times keep the Products comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording Armacell's interest.
- (d) All times dates or periods given for delivery of the Products are given in good faith but without any responsibility on Armacell's part. Time of delivery shall not be of the essence of the contract. Any period for delivery shall be calculated from the time of Armacell's acceptance of the Buyer's order or from Armacell's receipt of all information necessary to enable Armacell to manufacture or procure the manufacture of the Products (whichever shall be the later).

- (e) Where the Products are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any carrier shall be deemed to be an agent of Armacell and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979. The Buyer agrees that (i) section 32(3) of the Sale of Goods Act 1979 shall not apply to Products sent by Armacell; and (ii) it shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination, and into any country through which the Products are transported, and for the payment of any duties on or in respect of the importation or transportation of the Products.
- (f) Additions to orders will not be accepted after a vehicle loading schedule has been finalised. The Buyer's instructions, which restrict the delivery vehicle, must be specified by the Buyer no later than the time of order, and may incur extra charges.
- (g) In respect of each order Armacell will not consider delivering additional quantities after Armacell has dispatched an order.
- (h) All Armacell orders for pipe insulation shall be delivered by Armacell in tubular form unless the Buyer stipulates "slit" pipe insulation on order.
- (i) If for any reason the Buyer is unable to accept delivery of the Products at the time when the Products are due and ready for delivery Armacell may at its sole discretion without prejudice to its other rights and for such period as Armacell may determine store the Products at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be immediately informed thereof.

**7. Products Returned**

Products supplied in accordance with the contract cannot be returned without prior written authority from an Armacell salesman (and only unopened cartons and materials will be considered). Duly authorized returns shall be sent to Armacell's premises at Mars Street, Oldham, Lancashire, OL9 6LY or such other address as notified to the Buyer. Unless otherwise agreed in writing, the Buyer will be liable to pay to Armacell a charge of 15% of the invoice value of the Products dispatched for the returned Products to cover the costs, expenses, damages and losses incurred by Armacell associated with such returns.

**8. Warranty and defects**

- (a) Armacell warrants Insulation Tube and Sheet products in general against defects in manufacturing and material and deviations from published technical characteristics for a period of twelve months from date of delivery or for three months after the date of completion of the building in which the products have been installed which ever is the shorter period of time, if installed, used and maintained in accordance with Armacell's then current instructions and recommendations and provided that Armacell receives notice of such defects within seven days of the Buyer becoming aware of such defects.
- (b) Further, Armacell warrants Armacell insulation tube and sheet products in particular against defects in manufacturing and material and deviations from published technical characteristics for a period of five years from the date of installation if installed, used and maintained in accordance with Armacell's then current instructions and recommendations.
- (c) In substitution for all rights which the Buyer would or might have but for these Conditions, Armacell undertakes, in the case of Products manufactured by Armacell, that in the unlikely event that within 3 months of delivery of any Product a defect appears (being a defect which would not be obvious on reasonable inspection, whether or not such an inspection was carried out) or the Product proves to be unable to meet the relevant technical criteria, Armacell will at its option and as appropriate subject to proof of delivery, completion or installation date, either (i) remove and replace the defective Product at no charge or (ii) refund the cost of such Product by way of credit note to the Buyer, save always that Armacell shall have no responsibility if the Product in question was installed with the knowledge that the Product was defective.
- (d) In order to exercise its rights under this condition 8, the Buyer shall inform Armacell with seven days of the date when such defect appeared or ought reasonably to have been discoverable.
- (e) These warranties do not extend to ancillary materials such as adhesives, paint and/or tape and exclude minor deviations from samples as well as damage or performance problems arising out of improper use or installation and/or maintenance contrary to Armacell's then current recommendations.
- (f) The contract shall not constitute a sale by description or sample. These warranties are, as far as the law permits, in lieu of and exclude all other conditions warranties and terms whether expressed or implied in respect of the condition of the Products, their saleability or quality or fitness for any particular purpose.
- (g) Any guarantees are in addition to and do not affect your statutory rights.
- (h) Armacell shall not be liable for:
  - (i) imperfect or defective Products caused by any inaccuracies in any drawing, bill of quantities or specification supplied by the Buyer; nor
  - (ii) any defect in the Products arising out of the acts, omissions, negligence or default of the Buyer, its employees or agents including (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of Armacell as to storage and handling of the Products.

**9. Damage, Shortages, Delay in Transit**

- (a) No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the Products occurring prior to delivery or for any claim that any item delivered pursuant to the contract is defective or is otherwise not in accordance with the contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Products) or for non-delivery will attach to Armacell unless claims to that effect are notified in writing by the Buyer to Armacell (and in the case of claims for loss, damage or non-delivery with a copy to the carrier if Armacell's own vehicles have not been used to deliver the Products):
  - (i) within three days of delivery for loss, damage, defect or non-compliance with the contract; or
  - (ii) within ten days of the date of the invoice for non-delivery.
- (b) In the event of a valid claim for loss, damage, or non-delivery Armacell undertakes at its option either to repair, reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss or damage.
- (c) If the Buyer shall fail to give notice in accordance with 9(a) above the items delivered shall be deemed to be in all respects in accordance with the contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set out in 8 above) thereafter be wholly barred.

- (d) If packaging is visibly damaged on delivery or there are delivery shortages, the carrier's delivery note must be signed accordingly.

**10. Liability**

- (a) The aggregate liability of Armacell (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Products the subject of the claim.
- (b) Armacell shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
- (c) Nothing herein shall have the effect of excluding or restricting the liability of Armacell for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

**11. Default or Insolvency of the Buyer**

If the Buyer shall be in breach of any of its obligations under the contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed Armacell in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between Armacell and the Buyer or may (without prejudice to Armacell's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Products until any default by the Buyer be remedied.

**12. Rebates**

- (a) Any rebates, including (without limitation) rebates by means of a discount on the price of the Products ("Rebate") must be agreed in writing with Armacell and be subject to these Conditions of Sale.
- (b) In the event that Armacell has agreed a Rebate with the Buyer, the Buyer must within 4 weeks of the date of delivery of the Products write to Armacell detailing its entitlement to a Rebate and provide a copy of Armacell's agreement to the Rebate (a "Rebate Claim").
- (c) Provided that the Buyer has complied with the terms of clauses 12(a) and (b), Armacell will then calculate the Rebate due to the Buyer and will use its reasonable endeavours to provide a credit note to the Buyer for such sum within 4 weeks of the date of receipt by Armacell of the Rebate Claim.
- (d) In the event that the Buyer does not comply with the terms of clauses 12(a) and (b), the Buyer shall not be entitled to a Rebate payment from Armacell unless Armacell otherwise agrees in writing.

**13. Tactical Support Arrangements**

- (a) In circumstances where the Buyer is tendering for a large project or account which would require Armacell to supply it with a significant amount of the Products, Armacell and the Buyer may enter into a tactical support arrangement whereby they agree in writing to a specific discount provided that the Buyer
  - (i) is successful with its tender; and
  - (ii) demonstrates to Armacell's satisfaction (in its absolute discretion) that the Products will be used solely for the purpose of that specified project ("TSA Payment").
- (b) In the event that Armacell has agreed a TSA Payment with the Buyer, the Buyer must within 4 weeks of the date of delivery of the Products write to Armacell detailing its entitlement to a TSA Payment and provide a copy of Armacell's agreement to the TSA Payment (a "TSA Payment Claim").
- (c) Provided that the Buyer has complied with the terms of clauses 13(a) and (b), Armacell will then calculate the TSA Payment due to the Buyer and will use its reasonable endeavours to provide a credit note to the Buyer for such sum within 4 weeks of the date of receipt by Armacell of the TSA Payment Claim.
- (d) In the event that the Buyer does not comply with the terms of clauses 13(a) and (b), the Buyer shall not be entitled to a TSA Payment from Armacell unless Armacell otherwise agrees in writing.

**14. General**

- (a) All Product dimensions and weights are approximate.
- (b) Each delivery of the Products shall constitute a separate contract.
- (c) Armacell reserves the right to make changes in the design and specifications of the Products.
- (d) In respect of any Products not appearing on the current Armacell product list from time to time, the Buyer must at the end of order provide complete details of such Products to Armacell. In respect of such products, additional terms and conditions may be agreed in writing between Armacell and the Buyer.
- (e) Armacell reserves the right to discontinue the production of items appearing in its current product list.
- (f) These Conditions of Sale and the orders accepted by Armacell pursuant there to contain the entire agreement between Armacell and the Buyer and there are no other obligations between Armacell and the Buyer.
- (g) No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of Armacell's agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.
- (h) Armacell shall be entitled to delay or cancel delivery or to reduce the amount of Products delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Products by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.
- (i) Save as provided for contracts may not be cancelled except by agreement in writing of both parties and upon the payment to Armacell of such amount as may be necessary to indemnify Armacell against all loss resulting from the said cancellation.
- (j) Armacell may assign the contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company.
- (k) A person who is not a party to the Contract has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- (l) All contracts of sale pursuant to these Conditions of Sale shall be governed by, and construed in accordance with English Law and shall be deemed to have been made in England and the Buyer and Armacell agree to submit to the non-exclusive jurisdiction of the English courts.

