

SCHÜLKE & MAYR UK LIMITED

TERMS AND CONDITIONS OF BUSINESS

Company Number : 02987168 whose registered office is at Cygnet House, 1 Jenkin Road, Meadowhall, Sheffield, S9 IAT ("Schülke")

1. All contracts between Schülke and the person, firm or company who purchases goods from Schülke ("Buyer") ("Contracts") 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). Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Schülke which is not set out in the Contract.
2. All orders placed by the Buyer, whether by telephone, fax or post, shall be deemed to be accepted by Schülke on these terms and conditions only when a written acknowledgement of order is issued by Schülke or (if earlier) Schülke delivers the Goods to the Buyer.
3. Any dates specified by Schülke 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. Subject to the other provisions of these conditions Schülke shall not be liable for any direct, indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Schülke's negligence).
4. Schülke may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract. Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Buyer to repudiate or cancel any other Contract or installment.
5. Schülke shall not be liable for any non-delivery of Goods (even if caused by Schülke's negligence) unless the Buyer gives written notice to Schülke of the non-delivery within three days of the date when the Goods would in the ordinary course of events have been received. Any liability of Schülke 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.
6. The Goods are at the risk of the Buyer from the time of delivery. Ownership of the Goods shall not pass to the Buyer until Schülke 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 Schülke from the Buyer on any account.
7. Until ownership of the Goods has passed to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as Schülke's bailee; store the Goods (at no cost to Schülke) in such a way that they remain readily identifiable as Schülke's property, and maintain the Goods in satisfactory condition.
8. The Buyer may resell the Goods before ownership has passed to it provided that any sale shall be made in the ordinary course of the Buyer's business at full market value on the Buyer's own behalf.
9. The Buyer's right to possession of the Goods shall terminate immediately if
 - 9.1 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 of it, 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, 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
 - 9.2 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 Schülke 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 to trade; or
 - 9.3 the Buyer encumbers or in any way charges any of the Goods; or
 - 9.4 Schülke serves written notice on the Buyer to terminate the Contract.
10. Schülke shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Schülke.
11. The Buyer grants Schülke, its agents and employees an irrevocable license 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. Where Schülke 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 Schülke to the Buyer in the order in which they were invoiced to the Buyer.
12. Unless otherwise agreed by Schülke in writing, the price for the Goods shall be the price set out in Schülke's price list published on the date of delivery or deemed delivery. The price list is subject to change without further notice.
13. 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.

14. Payment of the price for the Goods is due in pounds sterling on the 25th day of the month following the month in which the invoice for those Goods was issued. All payments payable to Schülke under the Contract shall become due immediately on its termination despite any other provision. Time for payment shall be of the essence.

15. The Buyer must raise any dispute in relation to the invoice must be notified to Schülke within seven days of the date of the invoice. 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 Schülke to the Buyer.

16. If the Buyer fails to pay Schülke any sum due in accordance with the Contract, the Buyer shall be liable to pay interest to Schülke on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Schülke's bank accruing on a daily basis until payment is made, whether before or after any judgment. Schülke reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

17. Schülke shall not be liable for any defective or damaged goods:

17.1 unless the Buyer gives written notice of the defect to Schülke, including the Buyer's account number and invoice number, and, if the defect is as a result of damage in transit to the carrier, within three days of the time when the Buyer discovers or ought to have discovered the defect; and

17.2 unless Schülke is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Schülke) returns such Goods to Schülke's place of business for the examination to take place there; and

17.3 unless the Buyer does not make any further use of such Goods after giving such notice; and

17.4 if the defect arises because the Buyer failed to follow Schülke's oral or written instructions as to the storage, or use of the Goods or (if there are none) good trade practice; and

17.5 if the Buyer alters the Goods (or their packaging) without the written consent of Schülke.

18. If Schülke is liable for any defective or damaged Goods, Schülke shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate provided that, if Schülke so requests, the Buyer shall, return the defective or damaged Goods to Schülke. If Schülke complies with its obligations in this condition it shall have no further liability in respect of such Goods.

19. If Schülke is not liable for any defective or damaged Goods, but the Buyer wishes to return the Goods for any other reason, they may only do so with Schülke's prior consent if the packaging for the Goods has not been opened, and the Goods are returned with the original invoice showing the invoice number and customer account number.

20. Nothing in these conditions excludes or limits the liability of Schülke:

20.1 for death or personal injury caused by Schülke's negligence; or

20.2 under section 2(3), Consumer Protection Act 1987; or

20.3 for any matter which it would be illegal for Schülke to exclude or attempt to exclude its liability; or

20.4 for fraud or fraudulent misrepresentation.

21. Schülke shall not be liable to the Buyer, for any loss, damage, cost, expenses or other claims for compensation arising from any instructions received from or prepared by the Buyer which are incomplete, incorrect, inaccurate, illegal, or arising to any other fault of the Buyer.

22. Schülke'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.

23. Schülke 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.

24. Schülke may sub-contract and/or assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Schülke.

25. Schülke 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 Schülke including, without limitation, wars, strikes, industrial action, lockout, accidents, fines or prohibitive governmental regulation.

26. Each right or remedy of Schülke under the Contract is without prejudice to any other right or remedy of Schülke whether under the Contract or not

27. Failure or delay by Schülke 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.

28. Any waiver by Schülke 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.

29. 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.

30. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law. Schülke may take proceedings in any court of competent jurisdiction in one or more jurisdictions (whether confirmatory or not).