

TREMCO ILLBRUCK LIMITED CONDITIONS OF SALE

1.0 DEFINITIONS

1.1	Business Day	Means a day other than Saturday or Sunday on which Banks are open for ordinary banking business in London
1.2	Buyer	Means the person who buys or agrees to buy the Goods from the Seller.
1.3	Conditions	Means the Terms and Conditions of Sale set out in this document and any special terms and conditions agreed in writing by the Seller.
1.4	Contract of Sale	Means The Contract of Sale of The Goods consisting solely of The Order Acknowledgement, these Conditions of Sale and The Buyers' purchase order. In the event of any conflict between the said documents they shall take precedence in the order in which they are listed above.
1.5	Consumer	Means a person defined in the Unfair Contract Terms Act 1977, Section 12 purchasing the Goods.
1.6	Delivery date(s)	Means the date(s) specified by the Seller on the Order Acknowledgement stating when the Goods are to be delivered to the Buyer.
1.7	Goods	Means the goods that the Buyer agrees to buy from the Seller set out in the Order Acknowledgement.
1.8	Price(s)	Means the price of the Goods, which may include transport, packing and insurance (but excluding VAT) as set out in the Order Acknowledgement, including any fluctuation in price advised by the Seller to the Buyer up to the completion of delivery of the Goods.
1.9	Order Acknowledgment	Means the document setting out, amongst other things, the Goods, the Quantity of Goods, the Price and, if different to 3.0 of these conditions, the Payment Terms that are agreed between the Parties, subject to these Conditions of Sale.
1.10	Seller	Means tremco illbruck Limited.
1.11	The Parties	Means the Buyer and the Seller.

2.0 CONDITIONS APPLICABLE

2.1	These Conditions shall apply to all Contracts for the Sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or confirmation order or similar document.	
2.2	All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. Each Contract shall be concluded on the date that the Seller deposits in the post with pre-paid postage or transmits by facsimile, e-mail or hands to the Buyer or his representative the Order Acknowledgment signed by the Seller whichever may be the earliest to occur.	
2.3	In the event that no order has come into existence acceptance of delivery of the Goods by the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.	
2.4	Any variation of the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by the Seller.	
2.5	In the event of any conflict between the content and interpretation of these Conditions of Sale and the Order Acknowledgment then the Order Acknowledgment will take precedence except in respect of Clause 6.3 of the Conditions of Sale, which is applicable to all Delivery Dates given by the Seller.	
2.6	Any typographical, clerical or other error or omission in the Order Acknowledgement or any other document issued by the Seller shall be subject to the Seller's correction without any liability on behalf of the Seller.	
2.7(a)	In the absence of particular wording on any drawings/information supplied by the Buyer for the Seller's use in the manufacture/supply of the Goods the Seller will be entitled to assume all dimensions given are accurate and meet the relevant RIBA or British Standard approved scale.	
2.7(b)	The Sellers proprietary Goods will be manufactured and supplied to the Seller's specifications, dimensions, tolerances, finishes and quality stipulated in the Seller's Technical Literature and/or specific Order Acknowledgement current at the date of manufacture of the Goods.	
2.8	Exact colour match for Goods supplied is not guaranteed.	
2.9	The Goods supplied by the Seller must be stored, protected and maintained by the Buyer strictly in accordance with the Manufacturers instructions and used within any period of shelf life advised and where no such instructions/ advice are supplied with the Goods, the Buyer must seek same from the Seller to ensure satisfactory storage, protection, maintenance and use of the Goods. The Buyer's failure to store, protect, maintain and use the goods as recommended by the Manufacturer/Seller will invalidate any claim in respect of any damage to the Goods arising from such failure. Subject to Clause 5:	
2.10(a)	Where the Goods are manufactured by the Seller the Seller's sole liability for the Goods is limited to the replacement value of the Goods;	
(b)	Where the Goods are manufactured by someone other than the Seller then the Seller's sole liability for the Goods is limited to that liability which the Manufacturer or Supplier has to the Seller.	
2.11(a)	In the event that delivery of the Goods is delayed by the Buyer, for whatever reason, after the Goods or any part thereof have been manufactured then the Buyer will pay the full value of the Goods manufactured and any associated storage charges for the goods whilst stored as notified by the Seller to the Buyer. Payment in accordance with Clause 3.0 of these Conditions of Sale shall apply.	
2.11(b)	If delivery of the Goods is delayed, for whatever reason by the Buyer after the Goods or any part thereof have been manufactured then, notwithstanding payment by the Buyer, if the Seller agrees to store the Goods they will be immediately available for inspection by the Buyer and the provisions of Clause 6.5 shall be deemed to apply from the time at which storage commences so that any deterioration during storage shall be at the sole risk of the Buyer.	
2.12	Without prejudice to its rights and without incurring any obligation The Seller will endeavour to accommodate amendments made by the Buyer to the information detailed in the Order Acknowledgement provided that it is notified in writing by the Buyer, at least five Business Days prior to the commencement of manufacture of Goods. Any revised Delivery Date arising by reason of such an accommodation will be notified to the Buyer but the Seller shall not incur any liability whatsoever for delay in delivery thereby arising. The Buyer agrees to reimburse the Seller for all costs and expenses whatsoever arising by reason of the said amendments and payment shall be made in accordance with Clause 3.0 of these Conditions of Sale.	

3.0 PAYMENT

3.1	Prices set out in any quotation issued by the Seller and/or the Order Acknowledgment are subject to fluctuation. The Seller reserves the right to vary the price of the Goods at any time until delivery is completed and the Buyer agrees to pay any variation in the Price, together with VAT, if such variation is due to factors occurring after the making of the Contract, which are beyond the reasonable control of the Seller (including, without limitation, any change in specification of the Goods, scarcity of supply, monetary exchange rates, taxes, duties, the cost of labour and/or materials and any other manufacturing costs incurred by the Seller).	
3.2	Payment of the Price together with VAT shall be paid within 30 days net monthly of the Sellers Invoice. Time for payment of the said invoice shall be of the essence to the contract.	
3.3	The Seller shall not be bound to deliver the Goods until the Buyer has paid for them.	
3.4	If the Buyer fails to make payment within 30 days net monthly of the Seller's Invoice then without prejudice to any of the Seller's other rights the Seller may then:-	
3.4.1	Suspend or cancel deliveries of any Goods due to the Buyer; and/or	
3.4.2	Appropriate any payments made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.	
3.5	The Buyer may not set off against the Price (including any applicable VAT, transport, packing and insurance payable) any amount due from the Seller whether under the application contract of sale or otherwise.	
3.6	The Seller shall be entitled to invoice the Buyer for the Price or any part thereof, together with any VAT applicable or for any additional costs or expenses incurred by the Seller in its performance of the Contract of Sale at any time after the Order Acknowledgment(s) have been delivered to the Buyer and whether or not the Goods or any part thereof have been delivered.	
3.7	If the Buyer fails to make payment to the Seller in accordance with Clause 3.2 then the Seller shall be entitled to claim interest and compensation pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.	

4.0 SALE BY DESCRIPTION

4.1	In the case of the Buyer not being a Consumer, the Seller reserves the right to supply the Goods with changes in the specification or description or sample provided. However, the Seller shall only change the sample, specification or description in a contract not involving a Consumer when such change is required because of a change by the Seller's supplier at any time or other factors outside of its reasonable control.	
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5.0 WARRANTIES AND LIABILITY

5.1	Except where the Buyer is dealing as a Consumer all warranties, conditions or terms relating to fitness for purpose or satisfactory quality where implied by statute or common law or otherwise are excluded.	
5.2	Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer for any loss direct or consequential of whatever nature resulting from any breach of duty of the Seller either at common law or under statute including any representations inducing the Buyer to enter into this contract.	

6.0 DELIVERY OF THE GOODS

6.1	The date of delivery of the Goods is when either:-	
6.1.1	you collect them from the Delivery Point following our notification that they are ready for collection; or	
6.1.2	if an alternative delivery point has been agreed by us, the date that the Goods are delivered to that place. If you do request changes to the Delivery Point, you shall be liable for any charges made by us or any additional costs or expenses incurred by us as a result of such a change.	
6.2	We may at our discretion deliver the Goods by instalments.	
6.3	The Delivery Date and any other time or date which we give for delivery of the Goods or any instalment is an estimate only. You will not be entitled to terminate the Contract as a whole if we fail to meet any given times or dates for delivery unless such a delay exceeds 40 working days. Under this Contract, time is not of the essence.	

6.4	Where delivery is made by instalments, each instalment is to be deemed a separate contract and any delay, default or non-delivery of any one instalment shall not entitle you to cancel the remainder of the Contract.	
6.5	If: (i) you fail or refuse to accept delivery; or (ii) you do not give delivery instructions when placing your order for goods; or (iii) delivery is delayed at your request, then you will be responsible for paying or reimbursing us any additional costs or charges which we incur as a result of your aforementioned actions.	
6.6	You must notify us in writing if a delivery is not received within two (2) working days from the date we informed you that it had been despatched.	
6.7	Unless we agree otherwise, you shall provide to enable the Goods to be safely and properly unloaded:	
(i)	adequate labour	
(ii)	adequate safe access to all delivery vehicles	
(iii)	appropriate equipment necessary for off-loading	
(iv)	suitable hard standing surface for the purpose of safe off-loading	
6.8	You shall indemnify us against any claims arising from any unloading except to the extent that any such claims relate to personal injury, death or damage to property which is caused by the negligence of our employees or agents.	
6.9	You shall not fail or refuse to accept delivery of any Goods on the grounds that the quantity is below the quantity ordered.	
6.10	Any shortage of goods in a delivery must be notified to us and the carrier within twenty four (24) Hours after the Goods have been delivered. Provided we have agreed the amount of the shortage, we shall deliver, within a reasonable time, the balance of the goods required to bring the total to the quantity ordered.	
6.11	Subject to the other provisions of these Conditions, we shall not be liable for any direct, indirect or consequential loss (all of which include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the Delivery Date or any other time given for delivery of the Goods (even if caused by our negligence).	
6.12	If we are prevented, hindered or delayed from delivering the Goods because of a Force Majeure event, then we may give notice to you at any time in writing either: -	
(i)	cancelling our outstanding obligations to deliver Goods under the Contract, or	
(ii)	extending the time for delivery of the Goods outstanding under the Contract by a period not exceeding three months.	
6.13	If we give notice to you under Condition 6.12 then:	
(i)	we shall not be liable to you in damages for any loss whether direct, indirect or consequential of whatever nature which you may incur as a result of the cancellation or extension of the time for delivery; and	
(ii)	the time for delivery shall be extended accordingly and we shall not be in breach of Contract due to the late delivery. 6.14 It is your responsibility to ensure that all items are included in a delivery prior to signing the delivery note. No claim for missing goods will be accepted if the missing item/s is/are not noted on the delivery note.	

7.0 RETURNING GOODS

7.1	Complaints about whether the Goods delivered comply with the Contract as to quality must be made in writing within 5 working days after delivery, specifying the nature of the complaint(s). If we agree, in writing, that the Goods do not comply with the Contract and you reject the Goods (or any part thereof), then you must, as soon as is reasonably practicable, return the Goods to us and we will, if practicable, supply replacements for the rejected Goods, as soon as is reasonably practicable following our receipt of the rejected Goods.	
7.2	Save as aforesaid in 7.1, we shall have no further liability to you in respect of the rejected Goods.	
7.3	Where we have agreed that unused items can be returned then we will refund the price of any undamaged items which are returned to us by the agreed date. You will be responsible for the cost of returning the items unless we have agreed otherwise.	
7.4	If any returned items are damaged then we will not refund the price of that item.	

8.0 TITLE AND RISK

8.1	The Goods shall be at the Buyer's risk as from delivery.	
8.2	In spite of delivery having been made property in the Goods shall not pass from the Seller until the Seller has either retained cash or cleared funds from the Buyer for:	
8.2.1	The Price plus VAT, transport, packing and insurance as applicable in full; and	
8.2.2	Any other sums whatever that shall be due from the Buyer to the Seller.	
8.3	Until property in the goods passes to the Buyer in accordance with Clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.	
8.4	Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money. The Seller shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.	
8.6	Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 8.4 shall cease.	
8.7	The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods, which are the property of the Seller. Without prejudice to other rights of the Seller if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.	
8.8	The Buyer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.	

9.0 REMEDIES OF THE BUYER

9.1	Where the Buyer rejects the Goods in accordance with Clause 6.5 then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods that conform to the Contract of Sale.	
9.2	Where the Buyer accepts or is deemed to have accepted the Goods then the Seller shall except as provided herein have no liability whatever to the Buyer in respect of the Goods.	
9.3	Where any Goods supplied by the Seller are not in compliance with the Contract of Sale whether in description, quality or quantity (subject to the provisions of these 'Conditions of Sale') and the Seller agrees to such non compliance, then the Seller's sole liability to the Buyer shall be limited to the repair or re-supply of such Goods (where practicable) at the Seller's sole discretion subject to the Seller's liability being established.	

10.0 FORCE MAJEURE

10.1	The Seller shall not be liable for any failure to perform any contract for the sale of the Goods whether in whole or in part if this failure is caused by any inability to secure labour, materials or supplies or by any act of God, riot or civil commotion, strike, lock out, flood, drought, act of Government or any cause whatever outside of the Seller's direct control and either party shall have the right by giving notice in writing to the other to repudiate the contract.	
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11.0 INSOLVENCY OR DEFAULT OF THE BUYER

11.1	If the Buyer shall make default in or commit any breach of contract with the Seller or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall (in the case of an individual or partnership) make an arrangement for composition with his creditors, or be made bankrupt or make an application to Court for protection; or (in the case of a limited company) shall pass any resolution to wind up the company (other than for the purpose of solvent amalgamation or reconstruction) or shall be wound up by a creditor or make any application to the Court for relief against creditors or have a Receiver or Administrative Receiver appointed over the company's undertaking, property or assets then the Seller shall have the right forthwith by notice in writing to determine any contract then subsisting without prejudice to any claim or other right the Seller may have against the Buyer.	
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12.0 PROPER LAW OF CONTRACT

12.1	This contract is subject to the laws of England and Wales.	
12.2	All disputes arising out of this Contract of Sale shall be subject to the exclusive jurisdiction of the Courts of England and Wales.	

13. MISCELLANEOUS

13.1	All headings are for ease of reference only and shall not affect the construction of this contract.	
13.2	All references to the masculine shall include the feminine and neuter and vice versa and all references to the singular shall include the plural and vice versa.	
13.3	Any notice required to be given under these Conditions shall be in writing addressed to the party at its registered office of principal place of business or such other address as may have been notified to the other party and shall be deemed to have been served in the case of by post, two days after it has been delivered in the post with pre-paid first class postage or in the case of facsimile the date upon which it is sent provided it is transmitted before 4:00pm on a working day Monday to Friday, or in the case of personal delivery, the date, it is actually handed to the Buyer or his representative.	
13.4	No waiver by the Seller of any breach of a term of this contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.	
13.5	No person who is not a party to this Contract shall have any right under the Contract (Right of Third Parties) Act 1999 to enforce any term of this Contract.	
13.6	If it is found that any condition/conditions of this Contract of Sale is/are not legally enforceable then the unenforceable condition/conditions shall not in any way affect the applicability of the remaining conditions of this Contract of Sale.	