



Navigation Road, Stoke on Trent, ST6 3RU
Tel: 01782 834818 Fax: 01782 814438
www.wtlynn.co.uk

W T LYNN LTD TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these conditions:

BUYER means the person, firm or company specified overleaf entering into the Contract as customer to purchase the Goods from the Seller. CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes those terms set out overleaf and any special terms and conditions agreed in writing between the Buyer and the Seller. CONTRACT means the contract for the purchase and sale of the Goods. GOODS means the goods specified overleaf (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions. SELLER means W T Lynn Limited (registered in England under number 1388894). WRITING includes facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.

2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed. No variation to these Conditions shall be binding unless agreed in writing between the Buyer and the Seller.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents relating to the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in the sales or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, and description of the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

3.4 All drawings, illustrations, descriptions and specifications in the Seller's catalogues, price list and other advertising material (including CD ROM) are intended to give no more than a general idea of the goods manufactured and/or distributed by the Seller and such information is not intended and shall not be relied upon as giving a precise description of any goods nor as being representative as to any matter contained therein, nor shall any of it form part of any Contract with the Buyer.

4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the price set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in supplier's prices, any change in delivery dates, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions).

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay the Seller.

4.4 List prices are subject to alteration without notice and all orders are accepted on condition that they are charged at prices ruling at time of despatch, save that the Buyer will be entitled to cancel the order for the goods if the increase in price exceeds 5% of the price originally quoted.

4.5 Carriage charges and cost of delivery will be charge in accordance with the Seller's normal practice.





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5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or, as the case may be, the Seller has tendered delivery of the Goods.

5.2 Unless otherwise agreed the Buyer shall pay the price of the Goods within 30 days of the end of month of the date of the Seller's invoice and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 suspend all or any further deliveries to the Buyer made under that or any other contract with the Buyer and in such event the Buyer shall not be released from its obligations to the Seller under that or any other contract or cancel the Contract or any other contract with the Buyer and to claim damages from the Buyer for breach of contract;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Natwest Bank base rate from time to time accruing daily, until payment in full is made.

5.4 The Seller may without notice set off any sums from time to time owed to the Buyer in or towards the satisfaction of all and any liabilities of the Buyer to the Seller whether or not under this Contract.

5.5 The Buyer shall not be entitled to deduct or set-off from any sum due under the Contract for loss or expense alleged to have been incurred by the Buyer by any reason of any breach or failure to observe the provisions of any Contract made between the Buyer and the Seller. The Buyer expressly waves and abandons its common law and/or equitable right to set-off which the Buyer might otherwise be entitled.

6. DELIVERY

6.1 Delivery will be deemed to have taken place:

- (a) In the case of carriage arranged by the Seller, when goods are physically delivered to the location point specified in writing by the Buyer in its order form and which delivery location point has been agreed by the Seller.
- (b) In the case of carriage arranged by the Buyer, when the goods are loaded onto the Buyer's vehicle or are physically delivered to the Buyer's carrier.

6.2 Any dates quoted in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller) for delivery of the Goods are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery shall not be of the essence unless previously agreed in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess, if any, of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable cost of storage, including insurance; or
 - 6.5.2 sell the Goods at the best price readily obtainable and, after deducting all reasonable storage and selling expenses, account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.6 The Buyer shall not be entitled to request proof of delivery or dispute the delivery of goods if it does not do so within 30 days of the date of invoice.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;

7.1.3 the seller shall not be liable for a claim in respect of discrepancy or damage to Goods in transit unless such claim is notified to the carrier of the Goods on delivery or if that is not practical to the Seller in writing within 3 days of delivery;

7.1.4 the Buyer should ensure that he has adequate insurance from the time at which the risk passes to him.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold or agreed to be sold by the Seller to the Buyer under any other contract.





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7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Sellers's agent or bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Seller to account for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly store, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and for that purpose the Buyer hereby authorises and licences the Seller, its officers, employees and agents to enter upon any land or building upon which the Goods are situated to recover those Goods.

7.5 The Buyer shall not be entitled to or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall, without prejudice to any other right or remedy of the Seller, forthwith become due and payable.

7.6 Where Goods are exported from the United Kingdom the following provisions of this sub-clause shall apply to the Contract in substitution for the appropriate provisions of the remainder of clause 7 hereof. Goods for export will unless otherwise agreed be delivered FOB to a United Kingdom port nominated by the Buyer or selected by the Seller. The risks in goods sold on FOB terms shall pass when they cross at the ships rail at port of loading.

8. WARRANTIES AND LIABILITIES

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery whichever is the first to expire.

8.2 The Seller warrants that the Goods will at the time of delivery correspond with the description specified in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with description shall, whether or not delivery is refused by the Buyer, be notified to the Seller within 7 days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller in accordance with this condition, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet description is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Seller's reasonable control shall include act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strike, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

8.7 The Seller will in no circumstances unless expressly agreed in writing accept the return of any Goods sold to the Buyer. All requests for the return of Goods must be made in writing to the Seller. Providing the Goods were those specified by the Buyer at time of order the Seller shall authorise return of Goods at their complete discretion and shall charge a minimum handling charge of 25%. Goods which were invoiced at less than £15 cannot be restocked.

8.8 Aesthetic defects in timber products, including doors, door frames/linings and any other timber product shall be limited to aesthetic defects visible from 2 metres with in non-cross lighting, this excludes knots and other natural occurrences in timber, and also subjective defects such as grain pattern.

9. INSOLVENCY OF BUYER

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (or being an individual or firm) becomes bankrupt or (being a company) goes into liquidation, otherwise than for the purpose of amalgamation or reconstruction; or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of the Buyer's undertaking or any of its property or assets; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller 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





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delivered, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. GENERAL

10.1 Neither the Buyer nor the Seller shall be entitled to assign the whole or any part of its rights and/or obligations under the Contract without the prior written consent of the other.

10.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant on this provision to the party giving the notice. A notice shall be deemed to have been received, in the case of a facsimile, upon transmission and, in the case of a letter, forty eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duty posted.

10.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby unless such provision goes to the root of the Contract.

10.5 The Conditions shall constitute the entire agreement in relation to the sale of the Goods and no modification or waiver thereof shall be valid unless made in writing expressly for the purpose and signed by an authorised officer of the Seller and of the Buyer.

10.6 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

Signed _____
 Name _____
 Position _____ Date _____
 Business Name _____

