

## 1. Definitions

"**Company**" means Pearl Insulation Ltd.

"**Contract**" means the contract for the supply of Goods formed by the Customer's acceptance (which, however made or communicated, shall be deemed made subject to these Conditions) of the Customer's order.

"**Customer**" means the person or company placing an order with the Company.

"**Goods**" means all the goods and/or services which are subject to an order and are supplied to the Customer by the Company under these Conditions.

## 2. General

- 2.1 Unless otherwise agreed in writing by and between the Company and the Customer, (a) the Contract shall be deemed to have been entered into upon receipt of the Company's written order acknowledgement or (if no acknowledgment) delivery of the Goods by the Company, (b) all Goods sold by the Company are sold subject to these Conditions and these Conditions shall be the sole terms and conditions of any sale by the Company to the Customer, and (c) terms and conditions on the Customer's order form or other similar document shall not be binding on the Company and the placing of an order or the acceptance of the Goods by the Customer shall indicate unqualified acceptance of these Conditions.

## 3. Technical Documents

- 3.1 Unless otherwise agreed in writing by the Company, any data, drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods provided in any technical documents, catalogues or brochures are not to be treated as binding or forming part of the Contract.

## 4. Price

- 4.1 The price for the Goods shall be as stated in the Company price list (or quotation relating to the Goods) unless otherwise stipulated in writing by the Company.
- 4.2 Unless otherwise agreed upon, all prices shall exclude the cost of delivery and the value added tax. All additional charges, such as, but not limited to, insurance premiums, fees for export, transit, import and other permits, shall be borne by the Customer.

## 5. Terms of Payment

- 5.1 Payments shall be made by the Customer at the Company's address set out above (unless agreed otherwise) according to the agreed terms of payment or if there are no agreed terms, the Customer shall make payment for the Goods within 30 days of receipt of an invoice in rupees, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- 5.2 If payment is not made when due, the Customer shall be liable, without prejudice to other rights, for interest with effect from the agreed date on which the payment was due until payment is made in full at a rate of 3% per annum above the prime lending rate of the State Bank of India.

## 6. Reservation of Title

- 6.1 The Company shall remain the owner of all Goods until having received the full payment in accordance with the Contract. If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoices.
- 6.2 If the Customer fails to make any payment to the Company when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Company has reasonable cause to believe that any of these events is likely to occur, the Company shall have the right, without prejudice to any other remedies:
- to enter without prior notice any premises where Goods owned by it may be, and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Customer under this or any other contract;
  - to require the Customer not to resell or part with possession of any Goods owned by the Company until the Customer has paid in full all sums owed by it to the Company under this or any other contract;
  - to withhold delivery of any undelivered Goods and stop any Goods in transit.

Unless the Company expressly elects otherwise, any contract between it and the Customer for the supply of Goods shall remain in existence notwithstanding any exercise by the Company of its rights under this clause 6.

## 7. Delivery

- 7.1 Orders are accepted by the Company subject to the availability of Goods for delivery.
- 7.2 Unless otherwise agreed the Goods will be delivered Ex Works (as defined in INCOTERMS® 2010).
- 7.3 The Company undertakes to use reasonable endeavours to dispatch on a promised delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the Contract.
- 7.4 Any claim for liquidated damages for any proven losses arising to the Customer directly due to any delay in delivery of Goods by the Company under the Contract, shall not exceed zero point five per cent (0.5%) for every full week's delay and shall in no case whatsoever altogether exceed five per cent (5.0%) of the price paid or payable for the Goods of the part of the Goods in delay. No damages at all shall be due for the first two weeks of delay.

## 8. Packing

- 8.1 Unless otherwise specified on order acknowledgement, packing shall be charged for additionally by the Company and shall not be returnable.

## 9. Warranty, Liability for Defects

- 9.1 Unless otherwise specified in the order acknowledgement, the warranty period is 12 months from delivery.
- 9.2 Upon written request of the Customer, the Company undertakes at its choice to repair or replace any parts of the Goods which, before the expiry of the warranty period, are proved to not meet the Company's specification, subject to:
- the Customer making a full inspection of the Goods immediately upon delivery;
  - the Customer notifying the Company forthwith of any defects which it discovers;
  - the Customer having used the Goods in accordance with any instructions or recommendations of the Company;
  - the Goods not having been adjusted, altered, adapted or repaired by any party other than the Company;
  - the Goods being made available to the Company for inspection or returned to the Company at the Customer's own expense, as the Company may request.
- 9.3 THE COMPANY REPRESENTS AND WARRANTS THAT THE GOODS WILL MEET THE COMPANY'S SPECIFICATIONS AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES EITHER EXPRESS OR IMPLIED. EXPRESS WARRANTIES ARE ONLY THOSE WHICH HAVE BEEN EXPRESSLY SPECIFIED AS SUCH IN THE ORDER ACKNOWLEDGEMENT OR IN THE SPECIFICATIONS. AS FAR AS PERMITTED BY LAW, THE COMPANY SHALL HAVE NO LIABILITY FOR ANY LOSS OF PROFIT; LOSS OF REVENUE; INDIRECT LOSS OR CONSEQUENTIAL DAMAGES AND THE CUSTOMER SHALL HAVE NO OTHER REMEDIES EXCEPT AS SET FORTH HEREIN.
- 9.4 In no circumstances shall the Company's liability to the Customer for any breach of warranty, negligence or any claim under these Conditions exceed the price paid for the Goods with respect to which the claim is made.

## 10. Events of Force Majeure

- 10.1 No failure by either of the parties in the performance of its obligation shall be deemed a breach of the Contract or create any liability for damages if it results from a cause beyond the control of such party including but not limited to acts of God, laws, regulations, orders, or other actions of government, fire, storm, flood, accidents, strikes or other labour troubles, shortage, or inability to obtain raw materials, fuel, power or transportation.

## 11. Rights

- 11.1 No other person or body who is not a party to this Contract has any rights to enforce any terms of this Contract.

## 12. Jurisdiction and Applicable Law

- 12.1 The construction, validity and performance of the Contract shall be governed by Indian law and by entering into the Contract the parties submit to the exclusive jurisdiction of the Courts at **Bangalore** (India).