

Kingspan Insulation Ltd Terms & Conditions of Sale

JULY 2012



*Low Energy -
Low Carbon Buildings*

Terms & Conditions of Sale

1. Interpretation

1.1 In these conditions:

“KINGSPAN” means Kingspan Insulation Limited, Pembridge, Leominster, Herefordshire, HR6 9LA UK. (Registered in England & Wales No 01882722).

“BUYER” means the person who accepts a quotation from Kingspan for the sale of the Goods (as next defined) or whose order for the Goods is accepted by Kingspan.

‘GOODS’ means manufactured insulation products, insulation systems or ancillaries (including any instalment of Goods or any part of them) which Kingspan is to supply in accordance with these Conditions.

‘CONDITIONS’ means the terms and conditions of sale of Kingspan set out in this document and includes any special terms and conditions agreed in writing between the Buyer and Kingspan.

‘CONTRACT’ means the contract for the purchase and sale of the Goods by the Buyer from Kingspan.

‘FORCE MAJEURE’ means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of supplies or subcontractors.

“WRITING” includes letter, telex, cable, internet (such as email) and facsimile transmission.

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 reference only and shall not affect their interpretation.

2. Basis of the Sale

2.1 Kingspan shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of Kingspan which is accepted by the Buyer, or any written order of the Buyer which is accepted by Kingspan, 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 No variation to these Conditions or any subsequent variation shall be binding unless evidenced in writing by the authorised representative of the Buyer and the authorised representative of Kingspan.

2.3 Unless confirmed by Kingspan in writing, Kingspan’s employees or agents are not authorised to make any representations or warranties concerning the Goods.

2.4 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Kingspan shall be subject to correction without any liability on the part of Kingspan.

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3. Orders & Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Kingspan unless and until confirmed and acknowledged in writing by Kingspan.
- 3.2 The Buyer shall be responsible to Kingspan for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Kingspan any necessary information relating to the Goods within a sufficient time to enable Kingspan to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (as acknowledged in writing by Kingspan).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by Kingspan in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Kingspan against all loss, damages, costs and expenses awarded against or incurred by Kingspan in connection with or paid or agreed to be paid by Kingspan in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Kingspan's use of the Buyer's specification.
- 3.5 Kingspan reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to Kingspan's specification, which do not materially affect their quality or performance.
- 3.6 Where Kingspan manufactures a bespoke product or size for a customer, then this complete order will be charged in accordance with the customer order, irrespective of a cancellation request.

4. Price of the Goods

- 4.1 The price of the Goods shall be Kingspan's quoted price. All prices quoted are valid for 30 days only and are on ex-works basis after which time they maybe altered by Kingspan without giving notice to the Buyer.
- 4.2 Kingspan reserve 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 of raw material to Kingspan which is due to any factor beyond the control of Kingspan.
- 4.3 If the cost of the Goods is increased by the Buyer changing a delivery date, quantity or specification for the Goods or where there is any delay resulting from any change of instructions of the Buyer or a failure of the Buyer to give Kingspan adequate information or instructions then Kingspan reserves the right by giving notice to the Buyer at any time before delivery of the Goods to increase the price of the Goods to reflect such increase in cost.
- 4.4 The price is exclusive of any applicable Value Added Tax, or other State or local taxes, which the Buyer shall be legally liable to pay to Kingspan.
- 4.5 The cost of any pallets or returnable containers or ancillaries will be charged to the Buyer in addition to the price of the Goods, if they are required to ensure safe delivery of the Goods but full credit will be given to the Buyer provided they are returned undamaged to Kingspan before the due payment date.

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5. Terms of Payment

- 5.1 Kingspan shall be entitled to invoice the Buyer for the price of the Goods at any time after a Contract is entered into for the supply of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the end of the month of the date of Kingspan's invoice, even if delivery has not taken place and the property in the Goods has not passed to the Buyer. Where the payment days differ from those above these will be stated in the Buyers credit terms with Kingspan.
- 5.3 If the Buyer fails to make any payment on the due date stated on the invoice then Kingspan shall be entitled to:
 - 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other Contract between the Buyer and Kingspan) as Kingspan may think fit (not withstanding any purported appropriation by the Buyer); and
 - 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

- 6.1 Delivery of the Goods shall be made by Kingspan to a location or locations required by the Buyer. Deliveries will be made using articulated vehicles as standard method of delivery, however, Kingspan may use other vehicle types at Kingspan's discretion. If the Buyer has a specific vehicle requirement this will be agreed at Kingspan's discretion and any additional costs incurred will be surcharged to the Buyer.
- 6.2 Time and date for delivery shall not be of the essence unless previously agreed by Kingspan in writing. The Goods may be delivered by Kingspan 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, failure by Kingspan to deliver any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If Kingspan fails to deliver the Goods (where time is of the essence) for any reason other than Force Majeure or any cause beyond Kingspan's reasonable control or the Buyers fault, and Kingspan is accordingly liable to the Buyer, Kingspan's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest alternative market) of goods of similar specification to the 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 Kingspan adequate delivery instructions at the time stated for delivery then, Kingspan may:
 - 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

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7. Risk & Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Kingspan has tendered delivery of the Goods.
- 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 Kingspan has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Kingspan to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Kingspan's fiduciary agent, and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Kingspan's property.
- 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 resold) Kingspan shall be entitled at any time to require the Buyer to deliver up the Goods to Kingspan and to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Kingspan.

8. Warranties & Liability

- 8.1 Subject to the conditions set out below Kingspan warrants that at the time of delivery the Goods will correspond with their specification and will be free from defects in material and workmanship.
- 8.2 The above warranty is given by Kingspan subject to the following conditions:
 - 8.2.1 Kingspan shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer or any failure by the Buyer to comply with Kingspan's design and installation guidelines issued from time to time;
 - 8.2.2 Kingspan shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Kingspan's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without Kingspan's approval;
 - 8.2.3 Kingspan shall be under no liability for colour degradation in any materials or components incorporated in the Goods or used in their manufacture;
 - 8.2.4 Kingspan shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 8.2.5 the above warranty does not extend to parts, materials or equipment incorporated in the Goods but not manufactured by Kingspan in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Kingspan.
- 8.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 The Buyer shall within 7 days of the arrival of each delivery of the Goods, notify Kingspan in writing of any defect by reason of which the Buyer alleges that the Goods delivered are not in accordance with the specification and which should be apparent on reasonable inspection.
- 8.5 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

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- 8.5.1 Notwithstanding any other provision of this Agreement neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and this time for performance of that obligation shall be extended accordingly.
- 8.5.2 If at any time Kingspan claims Force Majeure in respect of its obligations under this Agreement with regard to the supply of the Goods, Kingspan shall be entitled to obtain from any other person such quantity of the Goods as Kingspan is unable to supply.
- 8.6 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 specification shall be notified to Kingspan within 7 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Kingspan accordingly, the Buyer shall not be entitled to reject the Goods and Kingspan shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.
- 8.7 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 specification is notified to Kingspan in accordance with these Conditions, Kingspan shall be entitled to replace the Goods (or the part in question) or at Kingspan's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but Kingspan shall have no further liability to the Buyer.
- 8.8 Except in respect of death or personal injury caused by Kingspan's negligence Kingspan shall not be liable to the Buyer for any consequential loss or damage which arise out of or in connection with the supply of the Goods or their use or sale by the Buyer, except as expressly provided in these Conditions.
- 8.9 Kingspan 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 failure to perform, any of Kingspan's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Kingspan's reasonable control.

9. Indemnity

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or sale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, Kingspan shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim against the Buyer provided that:
- 9.1.1 Kingspan is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Buyer shall give Kingspan all reasonable assistance for the purposes of any such proceedings or negotiations and shall comply with Kingspan's requirements and instructions; and
- 9.1.3 Kingspan shall be entitled to the benefit of, and the Buyer shall accordingly account to Kingspan for, all damages and costs (if any) awarded in favour of the Buyer.

10. Insolvency of Buyer

- 10.1 This clause applies if:
- 10.1.1 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 purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases or threatens to cease, to carry on business; or
- 10.1.4 Kingspan reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then Kingspan 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 delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

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11. Export Terms

- 11.1 In these Conditions 'Incoterms' means the International Rules for the Interpretation of Trade Terms of The International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given in particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Kingspan) apply notwithstanding any other provision of these Conditions.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and the exportation from the country of manufacture and for the payment of any duties thereon.
- 11.4 The Buyer shall be entitled to attend the testing and inspection of the Goods by Kingspan at Kingspan's premises before transportation. Kingspan shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection or which are made after shipment, or in respect of any damage during transit.
- 11.5 Other than as expressly agreed by Kingspan, in writing, payment of all amounts due to Kingspan shall be made by irrevocable letter of credit opened by the Buyer in favour of Kingspan and confirmed by a bank in the United Kingdom acceptable to Kingspan.

12. General

- 12.1 Kingspan is a member of the group of companies whose holding company is Kingspan Group Plc, having its registered office at Dublin Road, Kingscourt, Co. Cavan, Ireland and accordingly Kingspan may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of Kingspan.
- 12.2 Any notice required to be given to the Buyer under these Conditions shall be in writing addressed to the Buyer at its registered office or principal place of business or last notified email address.
- 12.3 Any notice required to be given to Kingspan shall be in writing addressed to Kingspan Insulation Limited, Pembridge, Leominster, Herefordshire HR6 9LA, UK, or any other address notified in writing by Kingspan to the Buyer or by email to info@kingspaninsulation.co.uk.
- 12.4 No waiver by Kingspan 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.
- 12.5 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.
- 12.6 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to statutory arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Chartered Institute of Arbitrators in accordance with the rules of that institute.
- 12.7 The Contract shall be governed by the laws of England & Wales.



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