

# HEY PAC Ltd

## Terms and Conditions of Sale

**1.1** Only these printed conditions together with any written amendments and/or alterations authorised by the Company shall apply to the contract for the sale of goods specified overleaf. In particular no statement in any quotation shall form part of the contract unless specifically included. **1.2** Quotations given by the Company are not offers capable of acceptance by the purchaser. There shall be no binding contract until written acceptance of the purchaser's order by the Company has been sent to the purchaser.

### Terms And Formation Contract

**2. Illustrations** Illustrations, descriptions and weights given in any of the Company's catalogues and statements (written or oral) made by any representative of the Company are provided to give purchasers an approximate picture or description of the article concerned and do not form the basis of any contractual liability. No warranty or condition that the article shall accord with such illustration, description or statement is to be implied and any warranty or condition capable of arising is hereby expressly excluded. Designs are subject to alteration without notice.

**3. Price** **3.1** Orders will be charged out at prices and will be subject to discount rates (if any) current at the time of delivery. **3.2** All prices are subject to Value Added Tax and any other government duty or tax applicable. **3.3** Unless otherwise stated in writing all prices stated are ex-factory and the purchaser shall be charged extra with any packaging and delivery costs (if any). **3.4** Any extra costs incurred by the Company on account of delays, interruptions or suspension of work due to the purchaser's failure to supply information or to default on the part of the purchaser shall be added to the contract price.

**4. Payment** **4.1** Credit accounts may only be opened at the Company's discretion and subject to satisfactory references being given. Where no credit accounts exist, payment must be sent with order. **4.2** Credit accounts shall be settled within agreed terms, notwithstanding that delivery may not have taken place and the property of the goods has not been passed to the purchaser. **4.3** Non payment on or before the due date (time being of the essence) shall entitle the Company, without prejudice to any other rights, to (a) Suspend any further deliveries of goods whether under this contract or any other (b) To repossess the goods (the purchaser granting the Company all necessary access) and (c) To receive interest at the rate of 4% above Bank of England base rate for the time being on the unpaid balance, whether before or after any judgement. **4.4** The purchaser shall not be entitled to delay payment of the price or any other part thereof on the ground that it has a claim or set-off against the Company.

**5. Delivery** **5.1** Delivery dates as given shall mean ex-factory and shall date from despatch of the Company's acceptance of the purchaser's order or from receipt by the Company of all necessary information to enable the Company to commence work, whichever is the later. **5.2** All delivery dates are approximate only and whilst every reasonable effort will be made to keep the given delivery dates, the Company shall be under no liability whatever if for any reason beyond the Company's immediate control delivery is delayed. In particular, the Company does not accept liability for any direct or indirect loss arising from delayed delivery in those circumstances. **5.3** If the purchaser is unwilling or unable to accept delivery at the premises stated on the order the Company shall have the right, in addition to any other rights granted by these conditions, to make a storage charge for goods not so delivered and also to recover from the purchaser all transport and handling costs.

**6. Shortages, Damage and Non-delivery** **6.1** The purchaser shall advise the Company of shortages of delivery or damages to goods within 24 hours of delivery specifying the shortage or damage and provided that the delivery note is marked "unexamined". In no case will the purchaser be entitled to reject the goods on the grounds of shortage. **6.2** The Company shall not be liable for non-delivery of the whole consignment unless the purchaser notifies the Company of such within 10 days of receipt by the purchaser of the Company's invoice. **6.3** Where goods have been consigned by an outside carrier, the purchaser shall comply in all respects with the carrier's conditions for notifying claims. **6.4** Goods which are the subject of a complaint should be returned carriage paid to the Company and must be accompanied by full details of the complaint.

**7. Risk** The risk in the goods shall pass to the purchaser upon collection or despatch from the Company's premises. Where the purchaser refuses to accept delivery, goods shall nevertheless thereafter be at the purchaser's risk.

**8. Property** **8.1** The property in the goods supplied shall not pass to the purchaser until the full price of the goods and goods which are the subject of any other contract between the purchaser, and the Company is paid. **8.2** Until such time as the full price of all such goods has been paid:- **8.2.1** they shall be held by the purchaser in a fiduciary capacity and stored by the purchaser at its premises in such a manner that they are clearly identifiable as the goods of the Company and shall be kept separate from any other goods whether or not supplied by the Company. **8.2.2** They shall be handed over to the Company on demand and the Company shall be entitled to re-take possession of them without prejudice to any of its other rights against the purchaser and the Company is hereby granted a licence to enter into the purchaser's premises for the purpose of recovering the goods. **8.3** If the purchaser fails to pay for the goods in accordance with these terms the Company will have the right to bring an action against the purchaser for the price of the goods at any time notwithstanding that property in the goods has not passed to the purchaser.

**9. Specification** **9.1.** The purchaser has responsibility to satisfy itself that the goods are suitable in all respects for the purchaser's purpose and the purchaser shall inform the Company in writing of any special circumstances or conditions affecting or liable to affect the use or performance of the goods. **9.2.** The Company shall be entitled to deliver and charge for goods supplied within the usual production tolerances.

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**10.Tests** If special tests are required these must be specified at the time of placing the order and will be charged for extra and shall be carried out, unless otherwise agreed, at the manufacturer's premises.

**11.Consumer Protection Act 1987** The purchaser shall indemnify the Company and keep the Company fully and effectively indemnified against any and all liability, loss, costs, expenses, claims or proceedings whatsoever (including any liability of the Company to any third party whether for loss of or damage to property or injury to or death of any person) arising out of or in consequence of or in respect of the manufacture of the goods or any part of the goods or the application of any process to the goods or any part of the goods in accordance with or in compliance with any specification submitted by or any instruction by or any design of the purchaser.

**12.Intellectual Property Rights** 12.1 Any specification, plans, drawings or designs supplied to the Company by the purchaser in connection with the contract shall remain the property of the purchaser and shall be treated as confidential by the Company, provided always that the purchaser shall indemnify the Company against all damages, penalties, costs and expenses arising out of infringement or alleged infringement of any intellectual property rights as a result of any work carried out in accordance with the purchaser's specification and instructions. 12.2 **Note:** The Company warrants only that the goods themselves and the delivery or importation thereof will not infringe any patent rights published (at the date of the contract) in the United Kingdom or in any other territory specified in the contract as a territory in which the goods are to be used and the Company shall indemnify the purchaser against damages and costs awarded for any such infringement provided always that:- 12.2.1 this indemnity shall not apply to any infringement which is due to the Company having followed an instruction furnished or given by the purchaser or to the use of such material in a manner or for a purpose or in a foreign country not specified or disclosed to the Company or in combination with any other materials or process, and 12.2.2 this indemnity is conditional on the purchaser giving to the Company the earliest possible notice in writing of any claim being made or action threatened or brought against the purchaser and on the purchaser permitting the Company at the letter's expense to conduct litigation that may ensue and negotiations for a settlement of the claim.

**13.Performance** 13.1 The Company warrants that insofar as the goods are of its own manufacture the goods shall at the time of delivery be free from defects in workmanship and materials. If any goods do not conform to this warranty the Company will at its option:- 13.1.1 replace the goods found not to conform to the warranty 13.1.2 take such steps as the Company deems necessary to bring the goods into a state where they are free from such defects, or 13.1.3 take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price Provided that the liability of the Company shall in no event exceed the purchase price of the goods, and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty. 13.2 the foregoing warranty is conditional upon:- 13.2.1 the purchaser giving written notice to the Company of the alleged defect in the goods, such notice to be received by the Company within seven days of the time when the purchaser discovers or ought to have discovered the defect and in any event within 12 months of delivery of the goods, and 13.2.2 the purchaser affording the Company a reasonable opportunity to inspect the goods and, if so requested by the Company returning the allegedly defective goods to the Company's works, carriage prepaid, for inspection to take place there. 13.3 Insofar as the goods are not of its own manufacture, the Company itself gives no undertaking or guarantee in respect of their description, quality or fitness for purpose but does undertake that (in the event that any defect in the workmanship or materials is notified to it within fourteen days of delivery of the goods), it will use its best endeavours to secure recompense from its own supplier in respect thereof and it will pass on to the purchaser the benefit of any guarantees or indemnities given to it in respect thereof by its supplier. 13.4 Save as provided in paragraphs 13.1 and 13.3 and in Section 12 of the Sale of Goods Act 1979:- 13.4.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the goods are hereby expressly excluded, and 13.4.2 the Company shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the purchaser. 13.5 In the event that, notwithstanding the foregoing provisions of this Condition, the Company is found liable for any loss or damage suffered by the purchaser, that liability shall in no event exceed the purchase price of the goods. 13.6 The foregoing provisions of this Condition shall not apply to sales which are made to persons who deal as consumers (as that expression is defined in Section 12 of the Unfair Contract Terms Act 1977) unless the contract is an international supply contract (as described in Section 26 of that Act).

**14.Termination and Suspension** 14.1 The Company reserves the right by written notice to suspend or cancel any order or part of any order:- If compelled to do so by reasons beyond the Company's reasonable control including but not limited to strikes, lockouts, accidents, breakdown of plant or machinery or shortage or unavailability of raw materials or components (imported or otherwise) from normal sources or routes of supply. In the event of failure by the purchaser to comply with any of its obligations under this contract or if the Company is reasonably of the opinion that the purchaser (being an individual) is not in a position to meet his commitments to the Company or (being a limited company) enters into a liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver or manager appointed in respect of all or any part of its assets or is the subject of an application for an administration order or is the subject of any proposal under Part 1 of the Insolvency Act 1986 for a composition in satisfaction of its debts or if it carries out or undergoes any analogous act or proceeding under foreign law. 14.2 Any such suspension of delivery or termination of the contract by the Company shall be without prejudice to any rights which the Company may have against the purchaser.

**15.Cancellation** Contracts are not subject to cancellation without the Company's written consent. Where cancellation is accepted the Company shall in addition to any express terms of acceptance of cancellation be entitled to re-imbursement of any costs incurred by the Company in connection with the contract.

**16.Sub-Contracting/Assignment** The Company reserves the right to sub-contract the whole or any part of this contract, the benefit of which may not be assigned without prior written consent of the Company.

**17.Export Orders** Where the Goods are to be exported to the purchaser:- 17.1 The Uniform Laws on International Sales Act 1967 shall not apply to the contract 17.2 Payment will be in Pounds Sterling or other agreed currency in England. All bank charges and other expenses in relation to foreign currency payments shall be for the purchaser's account. 17.3 The goods will be sold EX WORKS OR DELIVERED AT PLACE

at the option of the Company and the Company will be under no obligation to give the purchaser notice as specified in Section 32(3) of the Sale of Goods Act 1979.

**18. Notices** All notices relating to goods supplied under these Conditions shall be in writing and may be delivered by hand or sent by pre-paid registered mail or by e-mail or facsimile to the addressee at its address shown in the Contract or its last known business address as subsequently notified to the sender.

**19. Definitions** In these conditions reference to the Company shall mean Heypac Ltd. Reference to the purchaser shall include any individual, firm, company or corporation contracting with the Company.

**20. Proper Law** 20.1 This contract shall in all respects be construed and will operate as an English contract in conformity with English Law and the parties hereto submit to the jurisdiction of the English Courts. 20.2 The interpretation of the English edition shall prevail over any translation. 20.3 If any part of these conditions is held by any Court or Tribunal to be unenforceable or void this shall not affect the remainder of the contract, which shall continue in full force and effect.

The Company's prices are calculated on the basis that the above conditions will apply. Purchasers requiring prices to be quoted on a different basis should inform the Company.