

Instructures Limited – Terms and Conditions of Sale

1. We only supply Goods subject to these conditions, which shall govern the contract to the exclusion of any other terms and conditions.

2. DELIVERY

- 2.1 Any time or day quoted by us for delivery of all or any of the Goods is an estimate only. We shall not be liable for any failure to meet such estimate. Nor for any loss, whether financial or otherwise, resulting directly or indirectly there from.
- 2.2 Delivery of the Goods made by you collecting the Goods at our premises when we notify you that the Goods are ready for collection or, if some other place for delivery is agreed by us by delivering the Goods to that place.
- 2.3 We reserve the right to deliver by instalments and/or in advance of any quoted dates.
- 2.4 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by us to deliver any one or more of the instalments or any claim by you in respect of any one or more instalments shall not entitle you to treat the Contract as a whole as repudiated.
- 2.5 If you fail to take delivery of the Goods at the time notified by us then we may (without prejudice to its other rights and remedies): a) Store the Goods and charge you for any reasonable costs and/or b) Sell the Goods at any time and after deducting all costs and expenses.
- 2.6 Notification of short delivery or damage in transit must be made in writing to us within five days of the receipt of the Goods. In the absence of any notification we shall not be liable for any short delivery or damage, nor for any loss resulting there from.
- 2.6.1 We shall make good at our option by reimbursement of the whole or part of the price of replacement any such non-delivery, short delivery or damage notified as aforesaid. We shall be under no liability to you in connection with any damage or loss in transit where delivery takes place at our premises.

3. SUITABILITY

- 3.1 You:
- 3.1.1 Warrant and acknowledge that you have not relied on any representation made by us or our employees or upon any descriptive and technical specifications, drawings, catalogues, illustrations or particulars (including without limitation as to weight and dimensions) and waive any claim for breach of any such representations:
- 3.1.2 Warrant to us that the Goods are sufficient and suitable for the purpose or purposes intended (whether by yourselves or any third party);
- 3.1.3 Covenant that the Goods will be properly used or dealt with and in particular but without prejudice to the generality of the foregoing only in a manner and for purposes for which they are sufficient and suitable and that you will pass on to your customers a copy of any instructions relating to the Goods.
- 3.1.4 We reserve the right to alter specifications and descriptions of supplied components without prior notice as part of our policy of continual development.

4. PRICE

- 4.1 Subject to any special terms agreed in writing between us we shall be entitled to invoice you for the price on or at any time after we have notified you that the Goods are ready for collection or we have tendered delivery of the Goods.
- 4.2.1 We reserve the right to revise prices quoted where appropriate to take account of market fluctuations or circumstances beyond our control.
- 4.2.2 Unless otherwise expressly stated in writing, all prices are exclusive of VAT which shall be payable by you.
- 4.2.3 Carriage will be charged on all orders.
- 4.2.4 Settlement of account is to be made 30 days from date of invoice notwithstanding that delivery may not have taken place and the property in Goods may not have passed to you. We reserve the right to charge interest at the yearly rate of 4% over the National Westminster Bank's base rate on a daily basis on all monies outstanding after the due date until the actual date of payment (as well after judgment as before).

5. RISK AND TITLE

- 5.1 Customer's partial sections, Tiewires, brackets and any Tools provided by or paid for in full or part by the Customer shall at all times be at your risk, and it is your responsibility to have the appropriate insurance cover. We shall not be liable for lost profit or any other incidental or consequential damages arising from any damage or to loss or destruction of the goods or any such Tools.
- 5.1.1 Risk in the Goods shall pass to you immediately on delivery to you or into custody on your behalf whichever is the sooner.
- 5.2 Notwithstanding delivery, property in and title to the Goods shall remain with us until we have received payment in cleared funds of the full prices of (a) all Goods the subject of the Contract and (b) all other goods and services supplied by us to you under any other contract whatsoever.
- 5.3 Subject as herein provided, you shall nevertheless be entitled to deal with the Goods in the ordinary course of business provided that:
- (i) You shall not purport to dispose of property in and title to the Goods until delivery to your own customer.
- (ii) You shall first deal with the Goods that you have paid for and any payments received by us from you shall first be appropriated to Goods dealt with by you:
- (iii) If the Goods are altered or any goods become attached to the Goods, or if any part of the Goods is replaced such alteration, attachment or replacement shall not affect our property in and title to the Goods.
- 5.4 Until property in and title to the Goods pass to you.
- 5.4.1 You shall hold the Goods as bailee for us and shall keep the Goods in such a way that they are really identifiable as our property and shall keep the same property stored, protected and insured and (unless and until dealt with by you under Clause 5.3) separate from all or any other goods whether belonging to yourselves or any third party:
- 5.4.2 We shall be entitled at any time to revoke your power to deal with the Goods;
- 5.4.3 Your power to deal with the Goods shall automatically cease if you shall commit or be subject to any Act of Insolvency;
- 5.4.4 You shall not make any modifications to the Goods or their packaging or alter, remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods;
- 5.4.5 You shall account to us 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 other of your monies or property and in the case of tangible proceeds properly stored, protected and insured; provided that you shall have no authority to enter into any contract of sale or other contract on behalf of us and any such contract shall accordingly be concluded in your name.
- 5.4.6 Upon determination of your power to deal with the Goods under Conditions 5.4.2 or 5.4.3, you shall place the Goods at our disposal and we are hereby irrevocable authorised without the need for consent of any third party using only such force as may be necessary to enter your premises for their purpose of removing the Goods.

6. WARRANTY

- 6.1 We shall make good either by reimbursement of the whole or part of the price or by repair or replacement, on presentation of the original sales receipt, in the event of:
- (i) Any failure by the Goods to correspond with their specification at the time of delivery;
- (ii) Any defect developing under normal use in the Goods and due solely to faulty design (except where supplied by or on behalf of the Customer) materials and/or Workmanship;
- Provided that:
- 6.1.1 Any failure to meet specifications is notified in writing to us within 14 days from the date of delivery.
- 6.1.2 Any such defect in design, material and/or workmanship shall have appeared within 12 months of delivery and shall have been thereupon promptly notified to us in writing;
- 6.1.3 We shall be under no liability in respect of any defect in the Goods arising from any drawings, design or specification supplied by you;
- 6.1.4 We shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, lack of proper maintenance or servicing, abnormal working conditions, failure to follow our installation and product care instructions (whether oral or in writing), misuse (it being understood that our instructions are for guidance only and that you or your customers are responsible for ensuring that the Goods are used in proper and responsible manner) or alteration or repair of the Goods without our approval.
- 6.1.5 Any Goods alleged to be defective are promptly made available to us for inspection in situ if we request and, if so required by us are promptly returned to us at your risk and expense for inspection, and we shall in our reasonable opinion consider them to be defective solely by reason of faulty design, materials and/or workmanship.
- 6.1.6 This warranty does not cover re-installation or any other costs that may arise from a claim.
- 6.2 All other warranties, condition or other terms as to merchantable quality, fitness for purpose or which otherwise relate to the quality of the Goods provided are (save for the statutory rights of customers) hereby excluded. We shall (save as provided herein) have no liability whatsoever, howsoever arising or arisen including without limitation in negligence for any such matters. You hereby acknowledge that such exclusion is reasonable in light of the fact that it is not practicable for us to obtain insurance for consequential loss arising from the failure of the product at a cost which it could pass on to you.
- 6.3 We shall be under no liability under the warranties in Condition 6.1 until any monies due from you under the Contract have been paid.
- 6.4 Notwithstanding and without limitation to any other provision hereof in no event will we be liable under any terms of or otherwise in connection with the Contract (including without limitation in negligence) for the loss of profits or any other incidental or consequential damages.

7. SUPPLEMENTAL

- 7.1 Except when otherwise agreed, any tool sample provided entirely or partly at our expense shall be and remain our property and in our possession at all times, even when you have been charged with part cost. Where the cost of Tools or Samples is paid for in full by you, the tools become your property and may be removed subject to our right of lien until all other goods manufactured and/or supplied have been paid for.
- 7.2 Tools and samples in respect of which you have borne all or part of the cost shall (subject to Clause 7.4) be stored and maintained during their normal useful life at our expense, but while all reasonable care will be taken in maintenance, we do not undertake to replace worn out Tools.
- 7.3 If you order less of the Goods than is specified in our quotation, we shall be entitled to charge you the whole or a proportionate part of the cost of making the tools as we think fit taking into account any part cost already paid by you, and also adjust the price per metre of the products as we see fit.

8. GENERAL

- 8.1 In these conditions:
"We" means Instructures Ltd
"Contract" means the contract made or to be made between us and yourselves subject to these conditions.
"Repair" means to make good by any means including that of a chemical process.
- 8.2 We shall have no liability whatsoever for any failure to perform, or for any delay in the performance of, any of its obligations under the Contract arising wholly or in part by reason of any factor beyond our control.
- 8.3 No failure or delay on our part to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by us of any breach by you of any further or additional breach or breaches.
- 8.4 The Contract shall be governed by English Law.