

# Terms and Conditions of Sale

1. In these Terms and Conditions of Sale the term "Otter Product(s)" shall include all thermostats, cut-outs, circuit breakers and other controllers whether bimetallic, electronic, mechanical or otherwise operated and all components therefor as shall be supplied by or on behalf of Otter Controls Limited.

Whereas the operation of an Otter Product depends upon the purpose to which it is put, the precise temperature, current or other settings or specifications required, the variable nature of each individual appliance to which it is to be fitted and the manner in which it is so fitted, (the same being outside the control of the sellers):-

- (a) The sellers guarantee only that the Otter Products are manufactured in accordance with the specification stated on the sellers' order acknowledgement and attached general arrangement drawing if applicable (subject to the appropriate acceptance quality level (AQL) details of which will be supplied on request and subject to the sellers' right to use alternative or improved materials to any originally specified), and accordingly they hereby expressly exclude liability for failure of an Otter Product once it is fitted to an appliance howsoever such failure may occur and whether due to any negligent act or omission of the sellers or otherwise except where due to avoidable fault in manufacture or where the aforesaid guarantee has not been complied with.
  - (b) Without prejudice to the generality of the foregoing no warranty, condition, description or representation on the part of the sellers is given or implied by this agreement (save the guarantee aforesaid) nor is any warranty, condition, description or representation to be taken to have been given or implied from anything said or written either in negotiations between the sellers and the purchaser (or their respective representatives) prior to this agreement or at any time thereafter and any statutory or other warranty, condition or description expressed or implied as to the state, quality or fitness of the goods the subject of this agreement is hereby expressly excluded.
  - (c) Although the sellers may offer and provide help and advice in connection with the suiting of the Otter Products to any particular purpose or the fitting of the same to any particular appliance, whether before or after the making of this agreement, no such help and advice is to be taken as an acceptance by them of any liability over and above that accepted by the guarantee aforesaid and notwithstanding that any such help or advice might have been negligent.
  - (d) Should a purchaser have reason to question the quality, temperature setting, specification etc., of any of the goods sold, he must within 14 days of receipt of the goods notify the sellers who will decide whether to inspect the goods on the purchaser's premises, ask for a sample to be returned or replace the goods in question. Under no circumstances will the sellers be liable for any inspection, checking or sorting costs incurred by the purchaser.
2. In any event the liability of the sellers is limited to the replacement of goods supplied under this agreement, plus the reasonable freightage from the purchaser's premises to the sellers' premises (the purchaser being responsible for testing each appliance to which an Otter Product is fitted and for satisfying himself that the same is in full working order before onward sale or transmission). Any further liability for loss or damage arising from the sale, use, performance or failure in performance of any Otter Product and whether caused by negligence of the sellers, their servants or agents or otherwise is expressly excluded. The purchaser is therefore advised to effect any necessary insurance to cover himself against any further direct and/or any consequential loss due to failure of any Otter Product fitted to his appliance.
  3. (a) The sellers do not guarantee that delivery will be effected by any date referred to in the contract or in any antecedent negotiations thereon and therefore time shall not be of the essence of the contract.  
(b) Deliveries may be wholly or partially suspended and postponed in the event of stoppage, delay or interruption of work as a result of strikes, lock-outs, trade disputes, breakdown, accident or other cause beyond the sellers' control.  
(c) Any failure or fault in any Otter Product delivered under this contract shall not be a ground for cancellation of any further deliveries thereunder.
  4. No variation of the terms of the contract whether by way of addition or omission and no waiver in respect of any one term thereof shall be binding unless the same be in writing and signed by both the purchaser and by the sellers. Waiver of any one term shall not be taken to imply waiver of any other term of the contract.
  5. All orders placed with the sellers are subject to confirmation by the sellers' order acknowledgement.
  6. Irrespective of any price quoted or acknowledged, the sellers reserve the right to invoice the goods at the price ruling on the date of despatch.
  7. The sellers will not accept any costings clause however shown on the purchaser's orders or correspondence.
  8. (a) Accounts (except tooling charges) are payable in 30 days from date of invoice subject to credit allocation unless other arrangements are made in writing. Tooling charges are payable 50% with customer's order and 50% on supply of first production samples. Payment shall become immediately due upon the start of any act or proceeding involving the purchaser's insolvency.  
(b) Time of payment is of the essence. The purchaser shall not be entitled for any reason whatsoever to withhold or make any set off against payment.  
(c) The sellers shall be entitled to suspend or cancel further deliveries whether under this or any other contract made between the sellers and the purchaser if any payment in respect of Otter Products sold or agreed to be sold under this contract is overdue in whole or in part and whether or not any part of this contract is severable, or upon the start of any act or proceeding involving the purchaser's insolvency.  
(d) The risk in the Otter Products shall pass to the purchaser upon delivery but the property in and ownership of the Otter Products shall remain with the sellers who reserve the right to dispose of them until payment in full has been made for all of the Otter Products supplied or to be supplied under this contract; notwithstanding the aforesaid property in and ownership of any Otter Product shall pass to the purchaser as soon as the same is fitted to an appliance.  
(e) If any payment is overdue in whole or in part the sellers may without prejudice to any of their other rights recover or re-sell the Otter Products or any of them property in and ownership of which remain with them as aforesaid and for that purpose may by their servants or agents enter upon the purchaser's premises.
  9. The sellers can in no case guarantee that the goods the subject of this agreement do not infringe any patent, trade mark, copyright or other similar right held by any third party (and the purchaser accordingly takes the goods with the risk thereof) nor will the sellers accept any liability whether statutory or otherwise to disclose to the purchaser any claim by a third party that the goods do infringe any such right. The sellers therefore will in no circumstances be liable for any damage or loss howsoever caused to the purchaser which is or may be attributable to any such claim.
  10. Unless otherwise specified by the sellers for all Otter Products incorporating bimetal all temperatures quoted are understood to be the bimetal blade operating temperatures in a well stirred oil bath with a rate of temperature rise or fall of 1degC per minute, indicated by a pilot light and measured by a NPL certified mercury thermometer.
  11. Quantity orders are accepted on the condition that they are called off within 12 months of the date of the order acknowledgement. If they are not so called off, the sellers reserve the right to charge retrospectively the difference between the bulk price and the higher price for quantity actually called off.
  12. The purchaser shall not without the prior written consent of the sellers re-sell the Otter Products purchased from the sellers unless they form an integral part of the appliance into which they were designed to be incorporated.
  13. The Company reserves the Copyright in all its drawings, sketches, plans, prints and other documents or data.
  14. In any document or on any goods sold any references to the purchaser's part, specification or other number is for identification only and the use of such number by the sellers shall in no way constitute an agreement to manufacture goods to any specification other than that described in Condition 1(a) hereof.
  15. For order quantities between 1 and 10 Otter Products, the sellers reserve the right to despatch up to 2 additional Otter Products: between 11 and 50 up to 3 additional Otter Products and between 51 and 100 up to 5 additional Otter Products. In any event for order quantities in excess of 100 Otter Products the seller reserves the right to despatch any quantity between 5 per cent more and 5 per cent less than the ordered quantity.
  16. For the avoidance of doubt, nothing in this agreement shall confer on any third party any right to enforce any term of this agreement.
  17. This contract and these terms and conditions of sale and all matters arising thereunder shall be subject to and construed according to the laws of England and the purchaser agrees to submit to the English Courts.