

William Rowland Americas LP - TERMS OF PURCHASE

1. These Terms of Purchase, together with the express terms of buyer's Contract, are the only terms and conditions on which William Rowland Americas LP ("buyer") agrees to buy the goods subject of the Contract from seller as named in the Contract, all other terms and conditions including any proposed by seller being excluded. In case of any conflict between the express terms of buyer's Contract and these Terms of Purchase, the former shall prevail. These Terms of Purchase form part of and are incorporated in buyer's Contract by reference to them in buyer's Contract (whether overleaf or in buyer's separate purchase Contract document) and also apply by course of dealing if seller has sold or agreed to sell other goods subject to these Terms of Purchase.
2. The price shall be as stated overleaf. Unless stated otherwise overleaf, and subject to the other provisions of these terms, the buyer shall pay the price to the seller at the end of the calendar month following the later of the calendar month in which the goods are delivered to the buyer or the calendar month in which the buyer receives a correct valid invoice from the seller, and the buyer shall pay the seller interest at 4% per annum of any overdue payment of the price.
3. Time of delivery and time of shipment shall be of the essence. Unless stated otherwise overleaf, delivery shall be duty paid to the works or warehouse nominated by the buyer. Delivery terms defined in Incoterms 2020 shall have the same meaning in this contract unless expressly stated otherwise overleaf or in these terms.
4. The seller may only deliver the goods by instalments if the contract so provides. The buyer may elect to treat any delay or default by the seller in respect of any instalment as breach of the entire contract.
5. Full legal and beneficial title to the goods shall pass to the buyer on the earliest of delivery of the goods or the documents of title or payment of the price, without limitation to any earlier title or interest the buyer may acquire in goods shipped in bulk.
6. The seller represents and warrants ("the seller's warranty") that the goods shall (if sold by sample) comply with that sample and with the specification or description overleaf and shall be of satisfactory quality, acceptable to the buyer, fit for their purpose, and free from any defect in materials, design, workmanship, construction or manufacture, and that (without limitation to the foregoing) and without relieving the seller from any other obligation under this contract or at general law, all information provided by the seller in relation to the goods (including any certificates of origin, assay or analysis certificates or material safety data sheets) shall be true and accurate. The seller may not change the specification of the goods. The seller's warranty in this paragraph 6 is additional to, and does not replace, any representations conditions or warranties by the seller regarding the goods implied by law or statute or any course of dealing.
7. Where payment is against documents, the buyer's obligation to pay the price is conditional on receiving complete original documents referred to overleaf in good order and on time in accordance with the contract and (if applicable) Incoterms 2010, and the buyer shall be allowed a reasonable time to examine documents before payment.
8. Taking delivery of goods or documents or payment of the price or any part of it by the buyer or recall of goods by the buyer shall not have effect as acceptance of the goods or documents as being in conformity with the contract. Acceptance of some goods shall not be deemed acceptance of any other goods delivered under this contract. The buyer may reject goods for non-conformity with the seller's warranty at any time within 60 days from whichever is the later of the date of delivery of the goods to the buyer or the date of arrival of the goods at the port of destination. Expiry of such period shall be without limitation to any other right the buyer may have for breach by the seller of seller's warranty or seller's obligations in relation to defective goods including the right to claim damages.
9. The seller represents and warrants to the buyer that it has full legal power and capacity and all necessary licences authorisations and permits for it to perform the contract and that it acts at all times as principal when dealing with the buyer.
10. If the seller fails for any reason to deliver all the goods on time in full conformity with the contract (including paragraph 6) in the correct quantity (\pm 5% by weight), the buyer may, in addition to any other rights it has, by notice to the seller terminate this contract in whole or in part, and/or suspend payment of the price for the goods and/or defer or cancel delivery of, or (subject as stated in paragraph 8) reject, all or any of the goods, and/or (as regards goods not in conformity with the seller's warranty) require the seller at its cost promptly to replace such goods with goods in conformity, and / or invoice back all some or any goods delivered, and / or buy in goods to cover any short or non-conforming delivery at seller's cost and risk, the seller being liable for any loss on such buying in incurred by the buyer and any currency and / or hedge loss suffered by the buyer, without limitation to the buyer's other rights including the right to immediate repayment of the price.
11. The seller recognises the buyer buys the goods as a reseller / trader for resale. Without limitation to any other rights of the buyer under paragraph 10 or general law, the buyer may treat rejection of the goods by the buyer's customer or successor in title in circumstances demonstrating non-conformity with the seller's warranty as grounds for rejection by the buyer if advised to the seller by the buyer in accordance with paragraph 8. The buyer may assign its rights against the seller to buyer's customers or successors in title for the goods.
12. The seller shall indemnify and hold harmless the buyer from any loss or liability arising from infringement of any patent copyright design right or other intellectual property right in any jurisdiction arising from sale or supply of the goods by the seller to the buyer.
13. The buyer may also exercise its rights in respect of this contract under paragraph 10 if the seller is in default under any other contract for the sale, supply or purchase of goods or services between the buyer and the seller or if the seller ceases or suspends business or is subject to any voluntary or involuntary bankruptcy insolvency step or proceeding or seeks court or other legal protection from its creditors or a receiver, administrator, or other encumbrancer is appointed to or obtains all or a substantial part of its assets or undertaking or if the seller sells or disposes of all or a substantial part of its operating assets and undertaking.
14. The seller may not assign, subcontract or transfer the contract or any part of it or any right hereunder. No third party shall have the benefit of, or the right to enforce, his contract.
15. A party to the contract shall not be liable to the other party for delay or non-performance of its obligations under the contract to the extent such is due to circumstances beyond that party is reasonable control ("force majeure") including, without limitation, acts of God, flood, lightning, war, revolution, acts of terrorism, riot or civil commotion, strikes, lock outs, governmental or parliamentary restrictions or regulations, or other industrial action failure of supplies of power, fuel, transport and equipment. If the force majeure continues for more than 90 days, the buyer may give notice in writing to the seller terminating the contract without liability to either party except as regards deliveries of goods already effected.
16. The buyer may set off and apply any sums due to the seller from the buyer on any account in or toward payment of any liability or sums due from the buyer to the seller under this or any other contract between them.
17. Any dispute arising out of or in connection with this contract whether as to its existence, validity or termination or otherwise shall be referred to and finally resolved by arbitration under the Arbitration Regulations of the London Metal Exchange which are incorporated by such reference into this condition. The governing law of the contract shall be the substantive law of England. The United Nations (Vienna) Convention on the International Sales of Goods shall not apply to this contract.