

Cullen Terms & Conditions (“Terms”)

These Terms apply to all supplies made by Cullen. Customers should not order Cullen products unless they accept these Terms. Cullen supplies trade customers only and, by ordering Cullen products, each customer confirms the products will be used only in carrying on the customer’s business. All of the Terms are important and should be carefully considered but the provisions of clause 1 (dealing with delivery timescales) and clause 8 (dealing with the warranty applicable to Cullen products and the limitation of Cullen’s liability) are particularly drawn to the attention of customers.

1. Delivery

- Stock items will be delivered within 1 – 3 working days* of the order being received by Cullen.
- Non-stock items will be delivered within 5 to 7 working days* of the order being received by Cullen
- Non-standard connection items will be delivered within 5 to 7 working days* of written acceptance by Cullen of design drawings -unless customers require a different coating to the standard coating (Zinc undercoat with an organic bituminous top coat to BS 5628-3:2005) applied by Cullen in which case the delivery dates may have to be further extended.

Cullen use external couriers and time of delivery shall not be of the essence of the contract unless a director of Cullen has otherwise agreed in writing.

2. Description of Goods/Changes in Specification

Paper and website photographs, drawings, diagrams and descriptions are for illustrative purposes only and any sizes, capacities, tolerances and dimensions illustrated are for guidance purposes only. Cullen reserves the right to change the description or specification and product design in connection with any feature of our products, without prior notification. Such changes will be posted on the Cullen website within a reasonable period after the relevant change (www.cullen-bp.com).

3. Non-standard Products

To order non-standard products, customers must complete Custom Design templates online, www.cullen-bp.com or fax to 01592 771182. To ensure the product is manufactured to the specification and size required by the customer, the templates must be accurately completed and signed off by the customer.

4. Box & Pallet Quantities

Cullen reserves the right to change box quantities and pallet quantities without prior notification.

5. Customers’ Responsibility

By ordering Cullen products, customers confirm they and the architects, engineers or others advising them and the end-users, have read and will comply with the relevant Cullen Installation Guides/Guidelines.

6. Risk/Retention of title:

6.1 The risk of damage to or destruction of the products shall pass to the customer on delivery to the address provided by the customer for this purpose or, if the customer wrongfully fails to take delivery of the products, the time when Cullen first tenders delivery of the products.

6.2 Notwithstanding delivery and the passing of risk in the products, the property in the products shall not pass to the customer until Cullen has received, in cash or cleared funds, payment in full of the price of the products and all other products agreed to be sold by Cullen to the customer, whether under one contract or several, for which payment is then due.

6.3 Until such time as the property in the products passes to the customer (and provided the products are still in existence and have not been resold in the ordinary course of business to *bona*

fide purchasers), Cullen or its agents may at any time require the customer to deliver up the products to Cullen and, if the customer fails to do so forthwith, enter on any premises of the customer, or the premises of any third party where the products are stored, and repossess the products.

7. Notification period

Cullen should be notified of incorrect or damaged deliveries within 3 working days* of receipt of goods.

8. Cullen's Warranty and Liability to Customers

8.1 Subject to the following provisions, Cullen warrants that the products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.

8.2 The above warranty is given by Cullen subject to the following conditions:

8.2.1 Cullen shall be under no liability in respect of any defect in the products arising from any drawing, design or specification supplied by the customer or its agents and employees (including without limitation any information supplied by the customer in the Custom Design templates);

8.2.2 Cullen 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 Cullen's instructions (whether oral or in writing), misuse or alteration or repair of the products without Cullen's approval;

8.2.3 Cullen shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the products has not been paid by the due date for payment.

8.2.4 The above warranty does not extend to parts, materials or equipment supplied but not manufactured by Cullen, in respect of which the customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Cullen.

8.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 A claim by the customer which is based on any defect in the quality or condition of the products or their failure to correspond with specification shall (whether or not delivery is refused by the customer) be notified to Cullen within five days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the customer does not notify Cullen in accordance with this clause 8.4, the customer shall not be entitled to reject the products and Cullen shall have no liability for such defect or failure, and the customer shall be bound to pay the price on the due date for payment.

8.5 Where a valid claim in respect of any of the products which is based on a defect in the quality or condition of the products or their failure to meet specification is notified to Cullen in accordance with these Terms, Cullen may replace the products (or the part in question) free of charge or, at Cullen's sole discretion, refund to the customer the price of the products (or the appropriate part of the price), in which case Cullen shall have no further liability to the customer in respect of those products for which a refund has been made.

8.6 Except in respect of death or personal injury caused by Cullen's negligence or breach of statutory duty (where Cullen's liability shall be unlimited), Cullen shall not be liable to the customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty arising under statute or at common law, or under the express terms of the contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Cullen or its employees or agents or otherwise) which arise out of or in connection with the supply of the products (including any delay in supplying or any failure to supply the products in

accordance with the contract or at all) or their use or resale by the customer, and the entire liability of Cullen under or in connection with the contract shall not exceed the higher of (i) the contract price of the products or (ii) £100,000.

9. Price/Payment Date

9.1 Cullen prices exclude VAT, which will be charged at the appropriate rate.

9.2 Payment in full of Cullen invoices will be due by the last day of the month in which the products on the invoice are delivered, unless alternative payment terms have been agreed with Cullen in writing. If such payment is not made, Cullen reserve the right, without prejudice to their other rights under these Terms and at law, to suspend or cancel performance of any other orders placed by the customer.

10. Invalidity

If any provision of the contract of which these Terms form part is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected.

11 Choice of Law/Courts

Any contract of which these Terms form part shall be governed by the laws of Scotland, and the customer agrees to submit to the non-exclusive jurisdiction of the Scots courts.

** "Working days" are 8.30am – 5pm Monday-Friday*