

Woodley Equipment Company Limited Terms and Conditions of Sale

1 DEFINITIONS

- 1.1 In these conditions the following terms shall have the following meanings:
- "Company" means Woodley Equipment Company Limited. Company Number 4669537. Registered Office: Old Station Park Buildings, St John Street, Horwich, Bolton, BL6 7NY.
- "Contract" means any Contract for the sale of Goods by the Company to the Customer.
- "Customer" means the Customer of the Company.
- "Goods" means any Goods forming the subject of this Contract including parts of, or materials incorporated in, them (or as detailed below).
- "Price" means the price as detailed in the quotation (or as detailed below).

2 QUOTATION

- 2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation.

3 EXISTENCE OF CONTRACT

- 3.1 No Contract shall come into existence until the Customer's order in writing is received by the Company.
- 3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- 3.3 No variation or amendment of this Contract or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

4 PRICES

- 4.1 The Price for the Goods excludes shipping & handling and VAT and any other taxes or duties which will be charged at the rate or rates applicable at the date of invoice from the Company to the Customer.
- 4.2 The Company shall have the right to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery, schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.
- 4.3 Price changes shall take effect on the date of service on the Customer of notice of the change.

5 TITLE

- 5.1 Risk in the Goods shall pass to the Customer on delivery and until title passes to the Customer the Customer shall keep the Company indemnified against all loss or damage to the Goods or depreciation in their value and shall keep them fully insured, and shall not remove the Goods or allow them to be removed from the address to which they are delivered and shall keep them in good condition and complete and shall not allow them to become the subject of any charge or lien, whether by operation of law or otherwise.
- 5.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.

6 PAYMENT

- 6.1 The Company reserves the right to require payment of the Price in full or payment of a deposit upon the coming into existence of the Contract.
- 6.2 The balance, if any, of the Price, shipping and handling and VAT, is due and payable within 30 days of the date of the Company's invoice to the Customer, subject to any alternative terms of payment agreed in writing between the Company and the Customer. Payment is to be made in the currency in which the invoice for the Goods is rendered by the Company to the Customer.
- 6.3 The Company reserves the right to charge interest at a rate of 4% per month on invoices not paid by the due date (whether before or after Judgment) and to require reimbursement to the Company by the Customer of all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

7 DELIVERY

- 7.1 The Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier who shall be the Customer's Agent (whoever pays its charges) at the Company's premises or other delivery point agreed by the Company.
- 7.2 Risk in the Goods passes when they are delivered in accordance with clause 7.1.
- 7.3 The Company may at its discretion deliver the Goods by instalments in any sequence.
- 7.4 Where the Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
- 7.5 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Goods ordered.
- 7.6 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract alternative Goods of an equivalent or better specification than the Goods ordered if the Goods ordered by the Customer are for any reason not available.
- 7.7 Provided that the Customer provides to the Company all necessary documentation and information when required the Company will use its reasonable endeavours to deliver the Goods on or before the dates quoted by the Company but the Customer acknowledges that such completion and delivery dates are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted completion dates.
- 7.8 If the Customer fails: -
- (i) to take delivery of the Goods or any part of them on the due date; and
 - (ii) to provide any instructions or documents required to enable the Goods to be delivered on

the due date:

- the Company may, on giving written notice to the Customer store or arrange for the storage of Goods, and on service of the Notice:
- risk in the Goods shall pass to the Customer;
 - delivery of the Goods shall be deemed to have taken place; and
 - the Customer shall pay to the Company all costs and expenses, including storage, any redelivery and insurance charges arising from its failure.
- 7.9 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any performance of or repudiate the Contract.

8 CLAIMS

- 8.1 The Company shall have no liability with regard to any claim in respect of allegedly defective Goods unless any claim is made in writing to the Company containing full details of the claim within 7 days of delivery of the Goods.
- 8.2 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition, and the Customer shall, if so requested in writing by the Company, promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.
- 8.3 Where the Goods are delivered by the Company's carrier the Company shall have no liability with regard to any claim in respect of alleged loss, short delivery or breakage during transit unless:
- 8.3.1 any claim is made in writing to the Company containing full details of the claim within 24 hours of delivery or in the case of alleged non-delivery by close of business on the 1st working day following the date of expected delivery of the Goods;
 - 8.3.2 where the Goods or packaging appear to be damaged, the Customer must retain the allegedly damaged Goods and packaging for inspection by the carrier and must sign "damaged" upon the carrier's paperwork;
 - 8.3.3 where it is alleged that a short delivery has been made, the Customer must write the amount of the alleged shortage on the carrier's paperwork.
- 8.4 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

9 SCOPE OF CONTRACT

- 9.1 Under no circumstances shall the Company have any liability of whatever kind for: -
- 9.1.1 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Customer;
 - 9.1.2 any Goods which have been altered, modified or repaired except by the Company;
 - 9.1.3 the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
 - 9.1.4 any substitution by the Customer of any materials not forming part of any specification of the Goods agreed in writing by the Company;
 - 9.1.5 any descriptions, illustrations, specifications, drawings and particulars of dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;
 - 9.1.6 any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
 - 9.1.7 any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials are of quality equal or superior to those originally specified.
- 9.2 For the avoidance of doubt nothing in this Contract shall confer on any third party any benefit or other right to enforce any term of this Contract.

10 EXTENT OF LIABILITY

- 10.1 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:
- for death or personal injury resulting from the Company's negligence; and
 - as expressly stated in these conditions.
- 10.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged or do not comply with their description the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods.
- 10.3 If the Customer establishes that any Goods are defective the Company shall, at its option, replace with similar goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture assign to the Customer (so far as the Company is able to do so) any Warranties given by the manufacturer of the Goods to the Company.
- 10.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.

- 10.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.

- 10.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer in respect of the Goods or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.

- 10.7 No claim against the Company shall be entertained in respect of any Goods altered by the Company in accordance with any design or specification provided or made by the Customer.

- 10.8 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods.

11 GENERAL

- 11.1 The Company may sub-contract the performance of this Contract in whole or in part.
- 11.2 The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.
- 11.3 The Company shall have a lien on all the Customer's property in the Company's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing to the Customer. On accounting to the Customer, for any balance remaining after payment of any amounts due to the Company and the costs of sale or disposal of the Company shall be discharged of any liability in respect of the Customer's property.
- 11.4 If the Goods are manufactured and provided in accordance with any design or specification provided or made by the Customer, the Customer warrants that its design or specification and any materials provided by the Customer are not: -
- (a) in breach of any, regulation, code of practice or acceptable use policy; or,
 - (b) in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party;

and the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including, but not limited to, any claim, whether actual or alleged that the design or specification infringes the rights of any third party.

- 11.5 Except for any of the following which is expressly agreed to be included in the Goods all patterns materials drawings specifications and other data provided by the Company shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.

12 CONFIDENTIALITY

- 12.1 The Customer shall not at any time whether before or after the termination of the Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

13 CANCELLATION

- 13.1 Orders for Goods may be cancelled by written notice at any time before the Goods are delivered to the Customer. The Company reserves the right to require the Customer to pay the Company a restocking fee together with all shipping and handling charges incurred by the Company in respect of the Goods. Credit will be given for any deposit paid by the Customer to the Company in accordance with clause 6.1.
- 13.2 Orders for Goods with expiry dates may not be cancelled except at the sole discretion of the Company.

14 FORCE MAJEURE

- 14.1 The Company shall not be liable for any failure in the performance of any of its obligations under this Contract caused by factors outside its control.

15 LAW AND JURISDICTION

- 15.1 The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that the Company invokes the jurisdiction of the courts of any other country.

16 NOTICES

- 16.1 Any notice given under this Contract shall be in writing and may be served:
- (i) personally
 - (ii) by registered or recorded delivery mail,
 - (iii) by facsimile transmission (confirmed by post)
 - (iv) by email transmission
- 16.2 Each party's address for the service of notices shall be in the case of the Company the address set out in the quotation and in the case of the Customer the address set out in the Customer's order.
- 16.3 The notice shall be deemed to have been served:
- (i) if it was served in person at the time of service,
 - (ii) if it was served by post, 48 hours after it was posted.
 - (iii) if it was served by facsimile transmission, at the time of transmission.
 - (iv) If it was served by email at the time of transmission