

TERMS AND CONDITIONS OF SALE

1. DEFINITION

For the purpose of these Terms and Conditions of Sale, the following definitions shall apply

"THE COMPANY" shall mean EILERS & WHEELER (UK) LIMITED of 112/114 Tooley Street London SE1 2TH.

"THE PURCHASER" shall mean the Person, Firm or Company who accepts a quotation for the sale of goods or whose order for goods is accepted by the Company.

"THE GOODS" shall mean the goods which are the subject of these Terms and Conditions.

2. OVERRIDING PROVISIONS

- a) All offers are accepted and all Goods are sold subject to and upon these Terms and Conditions of Sale and shall be binding unless agreed in writing by the Company. The Purchaser shall be deemed to have agreed these Terms and Conditions in relation to all present and future dealings between the parties.
- b) No Purchaser Terms and Conditions of Purchase and no other Terms, Conditions Warranties, Particulars, Standards, Criteria, Specifications and other matters, whether written or oral, expressed or implied, shall form part of or be deemed to be incorporated into this Contract unless agreed in writing by a duly authorised officer of the Company.
- c) Despatch or delivery of the Goods by the Company to the Purchaser shall be deemed conclusive evidence of the Purchaser's acceptance of these Conditions.
- d) The Contract shall be subject to the Law of England and Wales.
- e) All disputes arising out of this Contract shall be subject to the jurisdiction of the Courts of England and Wales.

3. CREDIT ACCOUNT

The Company may in its absolute discretion, refuse any application for a credit account or for an extension of any existing line of credit.

4. DELIVERY

Where the Company has agreed to arrange delivery of the Goods the following provisions shall apply:-

- a) The Goods will be delivered to the location stated on the purchase orders as accepted by the Company.
- b) Dates quoted for delivery are given by the Company as estimates only. The Company shall in good faith endeavour to meet any estimated date of delivery, but reserves the right to vary this and shall not be liable for any loss or damage suffered by the Purchaser as a result of such variation.
- c) Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) by the estimated Delivery Date the Purchaser shall be bound to accept delivery and to pay for the Goods in full provided that the varied Delivery Date be any time within 2 (two) months of the estimated Delivery Date.
- d) Delivery Notes must be checked and signed at the time of delivery.
- e) It shall be the duty of the Purchaser to examine the Goods upon delivery to ensure that the delivery is complete and that the Goods have not been damaged in transit.
- f) If the Purchaser properly rejects any of the Goods which are not in accordance with the contract the Purchaser shall nonetheless pay the full price for such Goods unless the Purchaser gives notice of rejection to the Company within three working days of delivery and at the Purchaser's cost and with the Company's prior consent returns such Goods to the Company before the date when payment of the price is due.
- g) The Company shall not be liable whatsoever if the Purchaser fails to give such notice of damage or non-delivery and any such damage to the Goods shall be deemed to have occurred after transit and delivery, unless the contrary is proved by the Purchaser.
- h) In the event of any breach of this contract by the Company the remedies of the Purchaser shall be limited to damages. Under no circumstances shall the liability of the Company exceed the price of the Goods.

5. PRICES

The price of the goods shall be the Company's quoted price. Where the Company has quoted a price it may be subject to alteration without notice unless validity terms for the quoted price have formed part of the quotation. In this circumstance the price shall be binding upon the Company within the strict terms of the validity quoted.

The Company may be given up to 7 (seven) days before delivery to increase the price of the Goods to reflect any increase in the cost to the Company, which is due to factors accruing after the making of the Contract of Sale which are beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Purchaser may cancel the Contract within 7 (seven) days of any such notice from the Company. The price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.

6. REPRESENTATION AND WARRANTY

- a) The goods shall be supplied in accordance with the description contained in the Company's specifications and made in accordance with all applicable United Kingdom Standards and European Community Regulations which relate specifically to the Goods.
- b) The Company's liability for failure to comply with the aforementioned warranty shall be limited to the replacement free of charge of the Goods failing to comply with the Warranty or at the option of the Company issuing to the Purchaser a credit note equivalent to the price of the Goods failing to comply with the Warranty. The Company shall not in any event be liable unless:
 - i) The Purchaser notifies the Company in writing within 6 (six) weeks of any date of delivery of the Goods or the expiration of the "sell-by" or "best before" dates applicable to the Goods (whichever is the earlier of the two) of any defect or failure to comply with the Standards of Regulations referred to in clause 6(a).
 - ii) The Goods have been properly stored by the Purchaser at the correct temperatures.
- c) The Company's catalogues, price lists and all descriptions, other than any directly referable to the contract, are merely indications of the kind and price of goods supplied by the Company unless expressly agreed in writing by the Company.
- d) The Company reserves the right to make alterations to the design, appearance and technical specifications of the Goods from time to time and at such time or at other times, to make alterations to its advertised information concerning such Goods. Where such alterations are, in the reasonable opinion of the Company likely to be of sufficient significance, the Company shall give the Purchaser reasonable notice of the alteration.
- e) The Company will not accept liability to comply with the Warranty where Goods have been carried or stored by the Purchaser or on his instructions or by parties not appointed by the Company.

7. **LIABILITIES**

- a) The Company shall not in any event be liable for any consequential loss or damage (including loss of profit) suffered by the Purchaser howsoever arising.
- b) Except as specifically provided in these Terms and Conditions, the Company shall be under no liability for any loss or damage whatsoever attributable to any act or default of the Company or failure to carry out the Contract Terms.

8. **TITLE AND RISK**

- a) The risk for the Goods is passed to the Purchaser upon delivery, but the Company reserves title to Goods until the price plus VAT has been received in full from the Purchaser in respect of all Goods delivered and no other sums whatsoever shall be due than from the Purchaser to the Company.
- b) The Company reserves the right to repossess any Goods (including goods incorporated in other products) in respect of which payment is overdue and, thereafter, to re-sell the same.

9. **PAYMENT**

- a) Unless otherwise agreed the Purchaser shall pay the price plus VAT within 14 (fourteen) days of the date of delivery of the Goods. Time for payment shall be of the essence.
- b) In the event that payment is not received by the Company by the due date, the Company shall be entitled to suspend all further deliveries until payment is received and/or repudiate the contract, in such event, the Company shall be entitled to sell any Goods still in its possession and the Purchaser shall indemnify the Company for any loss incurred thereby.
- c) The Company reserves the right to charge interest on all overdue balances calculated on a daily basis at the rate of 4% per annum above the base lending rate of National Westminster Bank Plc from time to time in force.
- d) Notwithstanding anything in these Terms and Conditions, or implied to the contrary in the event of the Purchaser ceasing to take supplies from the Company (for whatever reason) the whole amount of monies due from the Purchaser to the date of cessation, shall fall due for immediate payment.
- e) The Purchaser shall be liable for all costs incurred by the Seller in the recovery of debts not paid by the due date.
- f) Payment may be made by cheque, credit transfer, direct debit or cash.

10. **SET-OFF**

Where the Company owes any sums to the Purchaser in consequence of any reciprocal trading arrangements or for promotional or advertising contributions or for retrospective discounts, the Company may set-off such amounts against the price (including any applicable VAT payable) of the Contract for sale or other amounts owing to it.

11. **WAIVER OF CONDITIONS AND INDULGENCE**

Any concession granted by the Company to the Purchaser or any waiver by the Company of its rights under these Terms and Conditions in respect of any particular transactions or series of transactions, shall not be deemed an agreement to confer the same concession in respect of any further transaction.

12. **FORCE MAJEURE**

If the Company's ability to perform its obligations hereunder is limited, delayed or prevented in whole or in part by an act of God, war, strike, lockout, industrial action, fire, flood, drought tempest or other event beyond the reasonable control of the Company, the Company shall be excused, discharged and released without penalty from performance of the Contract to the extent that such performance is so limited, delayed or prevented.

13. **SUB-CONTRACTS**

The Company shall in its discretion be entitled to sub-contract its obligations hereunder without the Purchaser's consent.

14. **EXPORT TERMS**

The interpretation of Export Terms shall be in accordance with 'INCOTERMS 2000' unless these terms are inconsistent with the express written terms of the contract.

15. **INTERFERENCE WITH MARKINGS**

The Purchaser shall not alter, obscure, remove or otherwise interfere with any markings, or other identification, of source or origin, placed by the Company or its agent on the Goods or on their labelling or packaging.