

WICHITA COMPANY LIMITED

CONDITIONS OF SALE

In these Conditions the following expressions shall have the meanings set opposite to them:-

the Company	the Wichita Company Limited
the Customer	the person, firm or company to whom a quotation, offer or tender is addressed or whose order is accepted by the Company
the Goods	goods and/or related services or any part thereof of any description to be supplied or performed under the Contract
the Order	the order or orders placed by the Customer upon the Company
the Contract	the contract between the Company and the Customer arising on acceptance of the Order subject to these Conditions of Sale

1 FORMATION OF CONTRACT

1.1 All quotations, offers and tenders are made and all Orders are accepted subject to the following Conditions. Subject only to Condition 1.3 all other terms, conditions or warranties whatsoever are excluded from any contract between the Company and the Customer or any variation thereof unless expressly accepted in writing by a director or other authorised representative of the Company.

- 1.2 A quotation is for information only and shall be binding on the Company only if and to the extent that it is incorporated in an Order which the Company has accepted in writing. Without prejudice to the generality of the foregoing, quotations offers and tenders issued by the Company are for the whole of the Goods referred to in them and the Company may refuse to accept any Order which relates to only part of such Goods.
- 1.3 In the event of a conflict between these Conditions and the Company's express terms of any quotation or acknowledgement of Order then such express terms shall prevail.
- 1.4 If any statement or representation has been made to the Customer by the Company or its officers, employees or agents upon which the Customer relies (other than in the document(s) enclosed with the Company's acknowledgement of Order), then the Customer must set out that statement or representation in a document to be attached to or endorsed on the Order and in any such case the Company may confirm, reject or clarify the statement and submit a new quotation, if appropriate. Under no circumstances shall the Company be responsible for, or be held liable in respect of, any statement or representation relied upon by the Customer which is not attached to or endorsed on the Order and subsequently confirmed in writing by the Company.
- 1.5 Unless otherwise agreed in writing all trade terms shall be interpreted in accordance with INCOTERMS current at the time the Order is accepted.

2 **PRICES**

- 2.1 Quoted prices are subject to fluctuation and the price payable for the Goods shall be as set out in the Company's acknowledgement of order save that the Company shall be entitled to increase such price in the event of increases in the cost of materials, labour, transport or utilities becoming effective before the date of delivery or any other cause beyond the reasonable control of the Company which increases the cost to the Company of performing the Contract. Without prejudice to the generality of the foregoing prices stated in a currency other than sterling may be subject to amendment in the event of fluctuation in the relevant exchange rate prior to the date of invoice.
- 2.2 Unless otherwise agreed in writing, all prices on Orders for despatch to points within the United Kingdom are quoted net ex works and exclusive of VAT.
- 2.3 Prices quoted on Orders for despatch to points outside the United Kingdom are quoted net ex works exclusive of VAT. If the Company agrees to deliver the Goods otherwise than at its premises the Customer shall pay all transportation, insurance, import duties and other charges of whatsoever nature incurred by the Company in making such delivery unless otherwise agreed in writing.
- 2.4 Where the Company agrees to deliver or arrange delivery of the Goods the Customer shall indemnify the Company against any demurrage costs incurred in the event of vehicles being unduly delayed at the designated point of delivery.

3 **PAYMENT**

- 3.1 Unless otherwise agreed by the Company in writing Goods invoiced up to and including the last day of a calendar month shall be paid for not later than 30 days after the date of invoice.

- 3.2 The Company shall be entitled to submit its invoice with its delivery advice note or at any time afterwards save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Customer.
- 3.3 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.
- 3.4 No disputes arising under the Contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.
- 3.5 In the event of default in payment by the Customer the Company shall be entitled, without prejudice to any other right or remedy:-
- 3.5.1 to suspend all further deliveries on the Contract and on any other contract between the Company and the Customer then current without notice; and/or
- 3.5.2 to charge interest on any amount outstanding at the rate of 4% per annum above the Base Rate from time to time of National Westminster Bank PLC such interest being charged as a separate, continuing obligation not merging with any judgment; and/or
- 3.5.3 to serve notice on the Customer requiring immediate payment for all Goods supplied by the Company under the Contract and all other contracts with the Customer whether or not payment is otherwise due or invoiced; and/or
- 3.5.4 to sue for the price of the Goods notwithstanding that title therein has not passed to the Customer.

4 **DELIVERY**

- 4.1 Delivery of the Goods shall be given and taken at the Company's premises unless the Company has specifically agreed to arrange transport for the Goods in which event delivery shall occur when the Goods arrive at the designated place of delivery.
- 4.2 Time for despatch of goods is given as accurately as possible but is not guaranteed. The Customer shall have no right to damages or to cancel the Contract for failure for any cause to meet any despatch date stated.
- 4.3 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Any delays or alterations by the Customer in design, specifications or quantities required may result in delay in delivery.
- 4.4 Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods delivered under the Contract shall entitle the Company to treat the Contract as repudiated by the Customer either in whole or in part.
- 4.5 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to the default of the Company, the Customer shall pay all costs and expenses, including a reasonable charge for storage and transportation so occasioned, and payment for the Goods shall be made in accordance with these Conditions.
- 4.6 If the Company agrees to deliver the Goods otherwise than at its premises it shall nevertheless not be liable for unloading the Goods at the designated point of delivery or for placing them in position on site, except by prior agreement in writing.

5 **PACKING**

- 5.1 The price of the Goods includes normal packaging and such packaging is non-returnable unless otherwise agreed in writing.
- 5.2 Any packaging to the Goods supplied by the Company, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of usual duration.

6 **RISK AND TITLE**

- 6.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:-
- 6.1.1 if the Company delivers the Goods by its own transport, or in accordance with a specific contractual obligation arranges transport for the Goods, at the time when the Goods arrive at the designated place of delivery; or
- 6.1.2 in all other circumstances, at the time when the Goods leave the premises of the Company.
- 6.2 Title to the Goods shall only pass to the Customer upon the happening of any one of the following events:-
- 6.2.1 the Customer having paid to the Company all sums (including any default interest) due from it to the Company under the Contract and under all other contracts between the Company and the Customer including (for the avoidance of doubt) any sums due under contracts made after the Contract whether or not the same are immediately payable; or

- 6.2.2 the Company serving on the Customer notice in writing specifying that title in the Goods has passed.
- 6.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that Condition 6.4 below is being complied with by the Customer or of recovering any Goods in respect of which title has not passed to the Customer.
- 6.4 Until title to the Goods has passed to the Customer pursuant to these Conditions it shall possess the Goods as fiduciary agent and bailee of the Company. If the Company so requires, the Customer shall store the Goods separately from other goods and shall ensure that they are held in good condition and are clearly identifiable as belonging to the Company.

7 **CANCELLATION**

- 7.1 Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation shall be paid forthwith by the Customer to the Company.
- 7.2 Goods returned to the Company without the Company's written consent will not be accepted for credit unless otherwise agreed in writing by the Company.

8 **VARIATION**

- 8.1 All variations required by the Customer and accepted by the Company shall be agreed in writing and the price, if not agreed prior to the manufacture or delivery of the Goods, shall be based on the appropriate Contract price (if any) plus escalation in respect of inflation and increased costs of materials and labour.

8.2 If the Company agrees to any variation any dates quoted for delivery shall be extended accordingly.

9 **SPECIFICATIONS**

9.1 The Company reserves the right to alter or change dimensions or composition of the Goods supplied to conform to applicable standards or laws or otherwise within reasonable limits having regard to the nature of the Goods.

9.2 The information contained in the advertising, sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of applications and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the Contract unless the Customer shall have complied with Condition 1.4 relating to statements and representations.

10 **SHORTAGES AND DEFECTS APPARENT ON INSPECTION**

10.1 Without prejudice to Condition 8.2 the Customer shall have no claim for shortages or defects in the Goods supplied apparent on visual inspection unless:-

10.1.1 the Customer inspects the Goods within three working days of the date of delivery (determined in accordance with Condition 4.1); and

10.1.2 a written complaint specifying the shortage or defect is made to the Company and (where the Company has arranged transport for the Goods in accordance with a specific contractual obligation to do so) to the carrier within seven working days of delivery in the event of any shortage or defect in the Goods or within ten working days of the notified date of despatch in the event of

non-delivery of a whole consignment or, in either event, within such shorter period as the carrier's conditions require; and

10.1.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods is made.

10.2 If a complaint is not made to the Company as provided in this Condition 10 then the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to pay for the same accordingly.

10.3 Defects in quality or dimension in any instalment delivery shall not be a ground for cancellation of the remainder of the Contract.

11 **DEFECTS NOT APPARENT ON INSPECTION**

11.1 The Customer shall have no claim in respect of defects in the Goods supplied which are not apparent on visual inspection at the time of delivery unless:-

11.1.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto or interference made therewith before the Company has (where it requires to do so) inspected the Goods in accordance with this Condition; and

11.1.2 the complaint is sent within 24 months of the date of delivery (determined in accordance with Condition 4.1) or, in the case of an item not manufactured by the Company, within the guarantee period specified by the manufacturer of such item.

11.2 The Customer shall not be entitled to make any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse, incorrect installation, maintenance or repair by the Customer or a third party, unsuitable lubricant, or damaging external influences of a physical, electro-chemical or chemical nature nor in respect of any Goods to which alterations have been made without such consent or to which replacement parts not supplied by the Company have been fitted.

11.3 The Company shall not be liable for (and the Customer shall indemnify the Company against claims arising from) loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or of circumstances which should reasonably have indicated to the Customer the existence of a defect.

11.4 The Company may within 15 days of receiving a written complaint (or 28 days where the Goods are situate outside the United Kingdom) inspect the Goods and the Customer, if so required by the Company, shall take all steps necessary to enable it to do so.

12. **GUARANTEE CONDITION**

12.1 Save as otherwise provided elsewhere in these Conditions Sections 13 to 15 of the Sale of Goods Act 1979 are to be implied into the Contract.

12.2 In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Customer to claim damages, to repudiate the Contract and/or to reject the Goods the Customer shall not then do so but shall first ask the Company to repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods or perform works of rectification free of cost and within a reasonable time or to repay the price of the Goods in respect of which the complaint is made.

12.3 If the Company does so repair the Goods or supply satisfactory substitute Goods or effect repayment or rectification the Customer shall be bound to accept such repaired or substituted Goods or repayment or rectification and the Company shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered or the repayment or rectification is effected.

12.4 The warranty contained in this Condition 12 is intended solely for the benefit of the Customer. All claims hereunder must be made by the Customer and not by any other person firm or company who may have possession of the Goods.

12.5 In the case of Goods not manufactured by the Company:-

12.5.1 the Company gives no assurance or guarantee whatsoever that the sale or use of the Goods will not infringe the patent, copyright or other industrial property rights of any other person, firm or company; and

12.5.2 the guarantee will be limited to the guarantee (if any) which the Company receives from the manufacturer or supplier of such Goods.

13 **LIABILITY**

13.1 The Company supplies installation and maintenance instructions for use with the Goods.

The Customer shall have no claim against the Company (whether under Condition 12 or otherwise howsoever) for loss, damage or injuries to the extent that the same are attributable to a failure to follow such instructions.

13.2 The Company shall not be liable:-

13.2.1 in respect of claims arising by reason of death or personal injury unless the Company is shown to have failed to exercise reasonable care in the performance of the Contract; or

13.2.2 for consequential loss, loss of profits, damage to real or personal property or wasted expenditure.

13.3 Without prejudice to Condition 13.2.2 where Goods are supplied for the purpose of a business the Company's liability, whether in respect of one claim or the aggregate of various claims (other than claims for death or personal injury in the circumstances of condition 13.2.1), shall not exceed the value of the Goods supplied under the Contract and the Customer agrees to insure adequately to cover claims in excess of such amount.

14 **SAFETY DEVICES**

14.1 It shall be the responsibility of the Customer to ascertain the requirements of its local factory inspector as to the proper guarding of the Goods and to ensure that such guarding is installed. Safety devices and guards supplied by the Company (otherwise than pursuant to a separate contract as provided below to supply guards to the requirements of the Customer's local factory inspector) will not necessarily meet the requirements of the Customer's local factory inspector and no warranty or representation is given or made that they comply with any statutory or other requirement and no liability is accepted by the Company in respect thereof.

14.2 The Company is prepared to enter into a separate contract with the Customer to supply guards to the requirements of the Customer's local factory inspector and the price for such guards shall be charged extra when the full extent of such requirements is made known. In the event that the Customer does not wish to enter into such a contract with the Company the Customer will on request give the Company a written undertaking pursuant to Section 6(8) of the Health and Safety at Work Act 1974 to the effect that it will provide and install such guards so as to relieve the Company from any liability in respect thereof.

15 **CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

15.1 All drawings, documents, confidential records, computer software and any other information whatsoever supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not, without the written consent of the Company, either give away, loan, exhibit or sell any such drawings, documents, records, software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods and for the purposes for which they were issued to the Customer.

15.2 All claims for alleged infringement in respect of patents, trade marks, registered design, design right or copyright received by the Customer must be notified immediately to the Company and the Company must thereafter be kept fully informed of the conduct of such claims.

16 **CUSTOMER'S DRAWINGS**

16.1 The Customer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Company, either directly or indirectly by the Customer or by the Customer's officers, employees, agents, consultants or advisers, are accurate, correct and suitable. Examination or consideration by the Company of such drawings, information, advice or recommendations shall in no way limit the Customer's responsibility hereunder unless a director or other authorised representative of the Company specifically agrees in writing to accept responsibility.

16.2 The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings which arise due to the manufacture of Goods to the drawings or specifications of the Customer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a patent, copyright, registered design, design right, design copyright or other exclusive right.

17 **INSOLVENCY**

If the Customer shall become bankrupt, or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts, or compounds with creditors or in the event of a resolution being passed or proceedings being commenced for the administration or liquidation of the Customer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager is appointed of all or any part of its assets or undertaking, the Company shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any other right or remedy accrued or accruing to the Company.

18 **FORCE MAJEURE**

In the event of the performance of any obligation accepted by the Company being prevented, delayed, or in any way interfered with by:-

18.1 direction of government, war, industrial dispute, strike, breakdown of machinery or plant, accident, fire or by any other cause beyond the Company's control; or

18.2 non-delivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods,

the Company may at its option suspend performance or cancel its obligations under the Contract without liability for any damage or consequential loss resulting therefrom such suspension or cancellation being without prejudice to the Company's right to recover all sums owing to it in respect of consignments delivered prior to the date of suspension or cancellation.

19 **SPECIALS AND FREE ISSUE MATERIALS**

19.1 The Company gives no guarantee of the suitability of materials or design of Goods made specially to the Customer's requirements and differing from the Company's standard specifications (if any) even if the purpose be known to the Company.

19.2 The Company accepts no responsibility for Customer's samples, drawings, tools and the like while in the Company's possession and the Company will not accept any claim for loss, breakages or damage to the same whatever the cause. The Customer shall be responsible for insurance cover in its own name and at its cost for the risks specified in this Condition 19.

19.3 Where materials are supplied by the Customer to the Company such materials shall remain at the risk of the Customer at all times and the Company shall not be liable for the loss

of, or damage to, any material during fabrication by the Company or by any sub-contractor employed by the Company or whilst on the premises of the Company or of any such sub-contractor or whilst in transit to or from the premises of the Company or of any sub-contractor provided that the Company may, at its discretion, make a contribution towards the replacement costs of the material.

19.4 Where materials are supplied by, or on behalf of, the Customer to the Company the Customer shall be responsible for ensuring that the material is of merchantable quality and is fit for its purpose and shall indemnify the Company against any loss, damage, injury or expense whatsoever arising directly or indirectly from any fault in or incorrect specification of the said material.

20 **CONSUMER PROTECTION ACT 1987 ("the Act")**

20.1 In circumstances where the Company supplies Goods to the Customer for incorporation with, or any other use ancillary to, any other products to be produced, manufactured, processed or supplied by the Customer then:-

20.1.1 the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said other products, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Company of such instructions, information or warnings; and

20.1.2 the Customer shall indemnify, reimburse and fully compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) that the Company may incur, or has to bear, in the event that any claim or claims are made against the Company pursuant to the Act or otherwise relating to the said other products of the Customer in circumstances in which the Goods supplied by

the Company were either (i) not the defective part of the said other product, or (ii) only became defective by reason of acts or omissions of the Customer (including without limitation the supply of defective free issue materials), or (iii) only became defective by reason of instructions or warnings given by the Customer or other supplier of the said other products or (iv) were supplied in accordance with a specification and/or drawings furnished by, or on behalf of, the Customer.

20.1.3 for the purposes of this Condition only the word "defective" shall be interpreted in accordance with the definition of 'defect' contained in Part 1 of the Act.

20.2 The Customer hereby acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by the Company with the Goods.

21 **ASSIGNMENT**

The Contract is between the Company and the Customer as principals and under no circumstances shall the Customer assign the benefit or burden of it without the prior written consent of the Company. The Company shall be entitled to assign or sub-contract the whole or part of its obligations under the Contract.

22 **SEVERABILITY**

In the event of any provision of these Conditions being or becoming void in whole or in part the other provisions of these Conditions shall remain fully valid and enforceable and void provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these Conditions.

23 **ATTENDANCE ON SITE**

Should the Company attend on the Customer's premises or on the premises of any purchaser from the Customer to perform any services in relation to the Goods then the Customer shall indemnify the Company in respect of all claims made, or proceedings taken, against the Company (and all damages and penalties awarded against or costs (including legal costs) incurred by the Company in connection therewith) by any third party including but not limited to the Company's employees, the Customer's employees or the employees of any contractor employed by the Customer or the personal representatives or dependants of such employees or other third parties in respect of death, personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of any act or omission (negligent or otherwise) of the Company its employees agents or sub contractors whilst at or on such premises.

24 **LEGAL**

The Contract shall be governed by and interpreted exclusively according to the Laws of England and shall be subject to the exclusive jurisdiction of the English Courts save to the extent that the Company may require to obtain injunctive relief outside such jurisdiction.

All references to Statute in these Conditions of Sale refer to UK legislation.

3/1/2001

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