

WARWICK WARD (MACHINERY) LIMITED

Terms and Conditions of Sale

1. Definitions

In these terms and conditions the following definitions apply:

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Buyer: means the customer named on the Sales Order Confirmation Form;

Contract: means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with and incorporating these terms and conditions;

Goods: means the goods (or any part of them) as set out in the Order;

Order: means the Buyer's order for Goods as set out in the Buyer's completed Sales Order Confirmation Form;

Sales Order Confirmation Form: means the form specified by the Seller to be completed by the Buyer confirming the terms upon which it agrees to buy the Goods; and

Seller: means Warwick Ward (Machinery) Limited (registered in England and Wales with company number 00988708).

2. Contract

2.1 The Sales Order Confirmation Form signed by the Buyer constitutes an offer to purchase the Goods in accordance with these terms and conditions. The Seller shall not be bound by the Order or any other order howsoever placed by the Buyer (whether or not such order purports to be an acceptance of any quotation or offer made by the Seller) until it is accepted by the Seller. The Seller shall only be deemed to accept and be bound by the Order when it confirms its acceptance to the Buyer in writing or, if earlier, when it commences performance of such Order.

2.2 The Buyer may not cancel an order which has been accepted by the Seller pursuant to condition 2.1 without the Seller's written consent. Cancellation without the Seller's written consent will result in a penalty charge equivalent to 10% (ten percent) of the Sales Price. The invoice relating to the penalty charge is payable within 7 days of the invoice date.

2.3 These terms and conditions shall apply to the Contract to the exclusion of any standard terms of the Buyer or any other terms that the Buyer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All measurements, drawings and specifications and other technical information contained within any catalogue, brochure or elsewhere are approximate and are intended to be indicative only and do not form part of the Contract. The Seller reserves the right to alter the design and specification of products and may deliver Goods so altered to the Buyer in fulfilment of the Contract.

3. Price

3.1 The purchase price of the Goods is set out on the Seller's Sales Order Confirmation Form and unless otherwise stated is exclusive of value added tax and delivery costs which shall be payable in full by the Buyer.

3.2 Unless stated to be a fixed price, the price payable under the Contract may be increased by the Seller upon notice to the Buyer at any time before delivery to take account of any increase in the cost to the Seller of the Goods comprised in such Contract or the cost of materials, labour and or overheads relating to the production of such Goods which shall have occurred since the date on which such prices were first quoted to the Buyer and the Seller's certificate of the amount of such increase shall be binding upon the Buyer. The Buyer shall not be entitled to rescind the Contract by reason of such an increase except where the increase exceeds 10 % of the purchase price.

4. Risk and Title

4.1 All risk in the Goods shall pass to the Buyer and the Buyer shall be fully responsible therefore once the Goods are made available for collection in accordance with condition 8.1.

4.2 Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with condition 4.1 for so long as the whole or any part of the purchase price of the Goods or any other amounts remain owing from the Buyer to the Seller (whether immediately due or not), title to and property in the Goods will remain in the Seller and will not pass to the Buyer until the Seller has received payment thereof in full.

4.3 All Goods which remain the property of the Seller will be kept separately and readily identifiable as the property of the Seller and will be held by the Buyer on behalf of the Seller in a fiduciary capacity and the Buyer shall keep them fully insured and in good and substantial repair and condition but the Buyer may resell such Goods to a third party in the ordinary course of its business. At any time after the due date for payment of the whole or any part of the purchase price for the Goods or any other amounts owing from the Buyer to the Seller and so long as payment thereof has not been received by the Seller in full, or if the Buyer becomes subject to any of the events listed in condition 7, the Seller, at the Buyer's expense, shall be entitled to require the Buyer to return to the Seller and shall have the right (acting through its officers, employees or agents) to enter the Buyer's premises and remove there from all Goods which remain the property of the Seller.

5. Warranties

5.1 Where the Goods are new the Goods are sold with the benefit of any standard manufacturer's warranty specified in the Sales Order Confirmation Form.

5.2 Where the Goods are new the Seller warrants that on delivery, the Goods shall conform with their description and be free from material defects in design, materials and workmanship.

5.3 Where the Goods are not new they are sold on the express understanding that the Seller provides no warranty as to state or condition nor the working hours of the Goods. The Buyer has had the opportunity to inspect and test the Goods fully and accordingly is deemed to be aware of any defects in the Goods.

5.4 Notwithstanding the provisions of conditions 5.1, 5.2 and 5.3 if the Goods are found to be substantially not in accordance with the Contract within seven days of the date of the delivery of the Goods, then the Seller will (at the Seller's option) either rectify the non-compliance or accept a return of the Goods and refund the purchase price (less a reasonable allowance for use, wear and tear and damage to the Goods occurring between delivery and return of them) or (in agreement with the Buyer) make an appropriate allowance in the purchase price.

6. Limitation of Liability

6.1 Subject to the provisions of condition 6.3 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.

6.2 The Buyer's remedies in respect of any claim in relation to the state or condition of the Goods shall be limited to those remedies provided in condition 5.4 and the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the purchase price of the Goods.

6.3 Nothing in these terms and conditions shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

7. Insolvency of the Buyer

If the Buyer being an individual shall be adjudicated bankrupt or is in the opinion of the Seller unable to pay his debts or has no reasonable prospect of so doing, or being a company, shall apply for or become subject to an administration order, pass a resolution for winding up or suffer a winding up order to be made against it or have a receiver or an administrative receiver appointed over the whole or any part of its assets, or, if in any jurisdiction in which that Buyer is incorporated, resident or carries on business any analogous event to those detailed in this condition 7 occurs, or is in arrears with any

payments due to the Seller, or in the opinion of the Seller, is or will be unable to pay its debts as they fall due, or becomes indebted to the Seller in an amount exceeding 10 per cent of its net tangible assets value as appearing from its last audited balance sheet then:

- (a) the Seller may elect not to deliver the Goods except against payment in cash of all amounts owing to the Seller by the Buyer in full; and
- (b) the Seller may suspend further deliveries under or cancel any unfulfilled contracts; and
- (c) all monies owing from the Buyer to the Seller shall become immediately due and payable.

8. Delivery

8.1 Unless otherwise expressly agreed in writing, all Goods are sold "ex works" (Incoterms 2010 or the most recent version of Incoterms at the date of the Contract) from the address of the Seller specified in the Sellers' Order Confirmation Form but, if requested by the Buyer in writing, the Seller may arrange for the Goods to be transported at the Buyer's risk to such address (not being outside the United Kingdom) as the Buyer may specify in writing with the cost of carriage to such address payable by the Buyer. The Buyer shall obtain any and all necessary insurance cover before attempting to move, load or operate the Goods on the Seller's premises, where appropriate including without limitation vehicle insurance and employer's liability insurance.

8.2 Delivery dates are given in good faith but are not guaranteed and no liability will be accepted for any losses, costs, damages or expense suffered by the Buyer as a result of failure to meet any date for delivery quoted to or agreed with the Buyer.

8.3 If provision is made for delivery of the Goods by instalments, such agreement shall be construed to be severable as to each and every instalment deliverable hereunder and each instalment shall be deemed to be sold under a separate and independent contract. Delay or default in the delivery of any such instalment shall not affect the contract as it applies to any other instalments and in particular but without prejudice to the generality of the foregoing shall not relieve the Buyer of its obligations to accept delivery of future instalments.

8.4 If there is any discrepancy between any Goods delivered by the Seller and any order confirmation, invoice or despatch note relating thereto then the Buyer shall give written notice to the Seller of such discrepancy within 7 days after receipt of such Goods. If no such notice is given within such period, the Goods delivered shall be deemed for all the purposes hereof to comply in all respects with the particulars set out in such documents.

8.5 If the Buyer fails to take delivery of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by the Seller's failure to comply with its obligations under the Contract or an event outside the reasonable control of the Buyer:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- (b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

8.6 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

8.7 If the goods are to be transported outside the United Kingdom the Buyer shall be responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Goods as may be required from time to time and, if required by the Seller, shall make those licences and consents available to the Seller prior to the relevant transportation.

9. Payment

Payment for the Goods shall be due prior to delivery against the Seller's Invoice and time of payment is of the essence. Any amounts not paid when due shall bear interest at 4 per cent above the base rate for the time being adopted by the Seller's bankers. If the Seller instructs solicitors or other agents to recover money owed by the Buyer then the Buyer will indemnify the Seller against all fees and costs payable by the Seller to its solicitors or agents in connection with such recovery.

10. General

10.1 Except with the prior written consent of a duly authorised representative of the Seller, neither these terms and conditions nor any claim or right arising out of breach of these can be waived, varied, suspended, added to or renounced. Failure by the Seller at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by the Seller of such provisions or in any way affect the validity of the Contract or any part thereof.

10.2 In the event that as a result of any act of God, storm, fire, flood, explosion, strike (whether at the Seller's premises or elsewhere), shortage of materials and / or any other matter which is beyond the Seller's reasonable control or not within its reasonable contemplation at the date of acceptance of the Buyer's order the performance of the Contract is made materially more onerous or expensive for the Seller, the Seller shall not be liable for any failure or delay in performing its obligations under the Contract and may at any time after such event occurs by written notice to the Buyer either cancel the Contract or notify the Buyer of a later delivery time without liability to the Buyer.

10.3 The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Seller (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times. For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery. Where the Goods are not new the Buyer shall be responsible for contacting the original manufacturer to obtain up to date installation and operation manuals as may be required.

10.4 A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.5 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and addressed to that party at the address set out in the Sales Order Confirmation Form or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, courier, fax or e-mail. Such notice or other communication shall be deemed to have been received: if delivered personally or by courier when left at the aforesaid address; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or if sent by fax at 9.00 am on the next Business Day after transmission provided that an error free transmission report has been received; or if sent by e-mail on receipt of delivery confirmation provided that such email is sent before 5:00 pm on a Business Day and where such email notice is sent to the Seller it is sent to both [accounts@warwick-ward.com] and [aw@warwick-ward.com].

10.6 If any provision of these conditions (or part of a condition) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.7 The Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.