

## Terms and Conditions of Business

### 1. INTERPRETATION

- 1.1. In these conditions the following definitions and rules of interpretation apply in this agreement:

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller and if different “you” means the person or persons who signed the Buyer’s credit application form.

“Goods” means the goods (including any instalment of the goods or any part of them) and / or any services which the Seller is to supply or provide to the Buyer in accordance with these Conditions.

“Seller” means Taylor & Braithwaite Ltd.

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods and “Contract Price” means the total price paid by the Buyer for the Goods.

“Writing” includes telex, cable, facsimile transmission, e-mail and comparable means of communication.
- 1.2. Any reference in these Conditions to any provision of statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in these conditions are for convenience only and shall not affect their interpretation.
- 1.4. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5. Should any of the Conditions be in conflict with those of the Buyer, the Seller’s Conditions will prevail.

### 2. BASIS OF THE SALE

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation (whether written or verbal) of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No variations of these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and a director of the Seller.
- 2.3. The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a director of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed. Furthermore, the Buyer shall be deemed to rely on its own skill and judgement in purchasing the Goods and it is not a condition of the sale nor does the Seller warrant that any vehicle, machine or tractor, plant or other equipment or any parts forming part of the Goods supplied by the Seller is fit for any particular purpose or is of any particular quality and the sale is not subject to any implied conditions or warranty unless given in writing at the time of sale.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer’s own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed in writing.
- 2.5. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the services contained in the Seller’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. ORDERS AND SPECIFICATIONS

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller’s authorised representative.
- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the seller any necessary information relating to the Goods within a sufficient time to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of, and any specification for the Goods shall be those set out in the Seller’s quotation (if any) (if accepted by the buyer) or the Buyer’s order (if accepted by the Seller).
- 3.4. The Seller reserves the right to supply goods of a different specification where such change is required to conform with any applicable safety or other statutory requirements and which does not materially affect their quality or performance.
- 3.5. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of both the Seller and the Seller’s supplier and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

### 4. PRICE OF THE GOODS

- 4.1. The price of the Goods shall be the price quoted by the Seller to be applicable at the time of delivery of the Goods to the Buyer.
- 4.2. The Seller reserves the right to increase the contract price notified to the Buyer by the Seller for the Goods, carriage, packaging and any other costs (“the Contract Price”) at any time to cover such additional sums as may from time to time be necessary because of i) any variation in the costs of materials, labour, overheads, transport and delivery, or ii) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller’s premises, the Buyer shall be liable to pay the Seller’s charges for transport, packaging and insurance. In any event and subject to the other terms of these Conditions, any quotation given by the Seller shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

- 4.4. The charges for services shall be calculated on a time and materials basis and shall be calculated in accordance with the Seller’s daily fee rates, as set out in its current price list at the date of the Contract or as increased from time to time
- 4.5. The Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the services, and for the cost of any materials.
- 4.6. The price for Goods is exclusive of any applicable value added tax, surcharges, delivery charge or other charges which the Buyer shall be additionally liable to pay to the Seller.

### 5. TERMS OF PAYMENT

- 5.1. Subject to any special terms agreed in writing between the Buyer and a director of the Seller, the Goods shall be sold on either a “cash with order” (meaning payment is made when the order is accepted by the Seller) or “cash when available for delivery” basis (meaning payment is due when the Seller notifies the Buyer (verbally or in writing) the Goods are available for delivery or collection). Where however credit terms have been arranged with the Seller in advance for the Buyer for the purchase of Goods (spare parts, service work or other services) then payment will be due and must be made in accordance with those terms which provide for payment in full by the twenty-eighth day of the month following the date of invoice. If the Goods are to be collected by the Buyer or if the Buyer fails to take delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. The Buyer shall pay the price of the Goods as provided for in these Conditions. Time for payment shall be of the essence of the Contract. Payment will only be deemed received when the Seller receives cleared funds. Receipts for payment will be issued only upon request.
- 5.3. If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.3.1. cancel the Contract or suspend any delivery to the Buyer,
  - 5.3.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
  - 5.3.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid after 90 days, at the rate of 1 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and
  - 5.3.4. charge the Buyer for any cost, legal or otherwise, incurred in recovering any debt.
- 5.4. All amounts due under the Contract to the Seller shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law (if applicable)).
- 5.5. All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods or services at the same time as payment is due for the supply of the Goods or services.

### 6. DELIVERY

- 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller’s premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Any special requirements of the Buyer for packaging and transport of the Goods must be specified in writing at the time of placing the order.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for non-delivery or any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by a director of the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3. Every effort will be made by the Seller to deliver the Goods within the agreed delivery period but no guarantee of delivery date is implied and the Seller shall not be liable for loss or damage occasioned by any delay in delivery whether or not the Seller was aware of this risk.
- 6.4. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may at its sole option:
  - 6.4.1. store the Goods at the Buyer’s risk until delivery has taken place and charge the Buyer for the reasonable costs (including any insurance if arranged by the Seller) of storage and any re-delivery, or
  - 6.4.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

### 7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.2. in the case of Goods to be delivered to the Buyer at the Seller’s premises at the time when the Seller notifies the Buyer that the Goods are available for collection or,
- 7.3. in the case of Goods to be delivered otherwise than at the Seller’s premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time the Seller has attempted delivery of the Goods.
- 7.4. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods in cleared funds.

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**Terms and Conditions of Business (continued)**

- 7.5. Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's agent and bailee and
- 7.5.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 7.5.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.5.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;
- 7.6. Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and recover the Goods.
- 7.7. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 8. LIABILITIES**
- 8.1. If any of the Goods supplied by the Seller or any part thereof is found to be of defective workmanship or material, so as to entitle the Buyer to have it replaced or repaired by the manufacturer, under the terms of the manufacturer's warranty or guarantee the Seller will assist the Buyer in arrangements with the manufacturer. The Seller shall supply a copy of any such manufacturer's guarantee or warranty to the Buyer on demand in the case of any inconsistency the Seller's terms shall be paramount. If any costs or expenses incurred by the Seller in such replacement or repair are not recoverable from the manufacturer by the Seller, they shall be paid to the Seller by the Buyer, and also if owing to the failure of the Buyer to comply with any terms imposed by the manufacturer, the manufacturer is not bound to replace or repair, the Seller shall be under no liability to the Buyer.
- 8.2. The terms of this clause are also subject to the following conditions:
- 8.2.1. the Seller 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 the manufacturer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the manufacturer's and / or Seller's approval;
- 8.2.2. the Seller shall be under no obligation or liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; and
- 8.2.3. the manufacturer has approved the defect and authorised a repair of the Goods.
- 8.3. Subject as expressly provided in these conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4. Any claim by the Buyer which is based on any defect in the quality or the condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within 7 days from the date of delivery of the Goods 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 Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and neither the Seller or manufacturer shall have any liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5. Goods may only be returned for credit if specifically agreed by a director of the Seller in writing. Such returns will be subject to a cancellation and handling charge of 20% minimum plus any shipping costs. Only new and unused Goods will be acceptable for return.
- 8.6. No Goods ordered, obtained or manufactured to the Buyer's own specifications can be cancelled or returned without the Seller's suppliers consent in writing and it shall be an implied condition of such cancellation that the Buyer shall indemnify the Seller against all loss and expense occasioned thereby.
- 8.7. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.8. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.8.1. Act of God, explosion, flood, tempest, fire or accident,
- 8.8.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition,
- 8.8.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority,
- 8.8.4. import or export regulations or embargoes,
- 8.8.5. strikes, lockouts, or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party),
- 8.8.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery,
- 8.8.7. power failure or breakdown of machinery.
- 8.9. The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the greater of the Contract Price or to the level of any valid insurance cover held by the Seller from time to time against the actual liability incurred.
- 8.10. If an order for Goods is placed by a partnership each of the partners is jointly and severally liable for payment of the Buyer's invoices. If an order is placed by a company, the directors will be personally liable (jointly and severally) for the Buyer's charges if the company does not pay the Buyer's invoices when they are due for payment. If an order for Goods is placed by a limited liability partnership each of the members is jointly and severally liable for payment of the Buyer's invoices if the limited liability partnership does not pay the Buyer's invoices when they are due for payment. If an order for Goods is placed by a corporation, society, unincorporated association or trust ("organisation"), the executive officers/trustees of the organisation will be personally liable (jointly and severally) for the Buyer's charges if the organisation does not pay the Buyer's invoices when they are due for payment. In these circumstances the Buyer may credit original invoices and issue new invoices to any one or more of the liable parties. You are deemed to have expressly agreed to these terms once you have placed an order for Goods and signed the credit application.
- 9. INSOLVENCY OF BUYER**
- 9.1. This clause 9 applies if:
- 9.1.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
- 9.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or
- 9.1.3. the Buyer ceases, or threatens to cease, to carry on business, or
- 9.1.4. the Seller reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer.
- 9.2. If this clause applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10. LOAN, HIRE and DEMONSTRATION**
- 10.1. The Buyer must ensure that any Goods / vehicle (e.g. car, tractor, ATV, machine, tool or other) that is either hired or loaned (for work or demonstration) from the Seller, must be adequately insured for loss or damage to the Goods / vehicle, and shall also fully and completely indemnify the Seller in respect of all claims by any person whatsoever, or injury to person or property caused by, or in respect of all costs and charges in connection therewith, whether arising under statute or common law. The Buyer's insurance policy must be available for inspection if demanded.
- 10.2. The Buyer shall make good any damage to the Goods / vehicle excepting fair wear and tear.
- 10.3. The Buyer shall be responsible for correct operation and maintenance of the Goods / vehicle within the manufacturers guidelines.
- 10.4. The Buyer shall be responsible for returning the Goods / vehicle in the same condition as taken, should the Goods / vehicle need cleaning, refuelling, oils topping up or other consumables need replacing they will be invoiced to the Buyer.
- 11. GENERAL**
- 11.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.3. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.4. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 11.5. Entire agreement.
- 11.5.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.5.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 11.5.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 11.6. These Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The Buyer may not assign the Contract.
- 11.7. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 11.8. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 11.9. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.