

Waterra UK Ltd - Standard Trading Conditions

1. Definitions

In these Standard Trading Conditions the following words shall have the following meanings; "the Company" shall mean Waterra (UK) Ltd whose principal office is at Unit 4, r/o 179 – 189 Stratford Road, Shirley, Solihull. B90 3AU. "the Goods" shall mean all goods, materials, software, manuals and packaging supplied by the Company to the Customer, whether or not manufactured or produced by the Company and the services associated therewith and "the Customer" shall mean any person with whom the Company contracts.

2. Making the Contract

- (a) The quotation of the Company comprises an invitation to treat which is open for a period of Thirty (30) days from the date thereof unless agreed otherwise PROVIDED THAT the Company has not previously withdrawn it.
- (b) Any order made by the Customer orally must be confirmed in writing by the Customer. Any order issued by the Customer is subject to acceptance by the Company.
- (c) All orders are accepted under these Terms and Conditions alone and supersede all previous Agreements and exclude any purported Terms and Conditions in the Customer's order.
- (d) No variation of the Terms and Conditions is permitted unless expressly authorised by an Officer of the Company in writing.
- (e) No servant or agent of the Company has authority to make any representation or give any warranty in relation to the Goods and if any statement or representation has been made to the Customer by the Company, its servant or agents upon which the Customer relies other than in the document enclosed with the Company's quotation or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or enclosed on the order and in any such case the Company may confirm, reject or clarify the same and submit a new quotation.

3. Variation/Cancellation

- (a) No cancellation by the Customer is permitted except where expressly agreed by an Officer of the Company in writing.
- (b) Any variation in an order, which is accepted by the Company, shall entitle the Company to make an appropriate variation in prices and delivery times, which shall bind the customer.
- (c) Minor deviations by the Company shall not constitute a breach of contract.
- (d) The Customer will in the event of agreed cancellation indemnify the Company fully against all expense and loss incurred up to the time of cancellation together with by way of liquidated damages a sum of Ten percent (10%) of the contract price which shall be paid by the Customer to the Company forthwith.

4. Price

- (a) Unless otherwise stated all prices quoted are for the cost of Goods alone ex-works.
- (b) All prices are subject to revision or withdrawal by the Company without prior notice (until the Contract is made).
- (c) The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported materials.
- (d) Carriage, postage and packing will be charged extra.
- (e) Value Added Tax will be charged where applicable.

5. Terms of Payment

- (a) All orders submitted from customers in the United Kingdom become payable 30 days after date of invoice. Time for payment shall be of the essence.
- (b) All International orders are subject to separate terms of payment, details of which are available on application.
- (c) The Company reserves the Right to charge at two and a half per cent (2.5%) per annum above the Base Lending Rate of Lloyds TSB on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 5a.
- (d) If the Customer suffers distress or execution against its property, goes into liquidation, has a Petition presented for its winding up or passes a Resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compound or makes a voluntary arrangement with its creditors or has a Receiver or Administrative Receiver appointed over all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any composition or scheme of arrangement with its creditors (or carries out or suffers any analogous act or event under foreign law) or commits a material or serious breach of the Agreement (and in the case of such a breach being remediable fails to remedy it within seven (7) days of receiving notice to do so) it will be deemed to have repudiated the Contract.
- (e) The Company reserves the right at any time to demand security for payment before continuing with or delivery of any order.
- (f) Payment will not be effected until clearance of cheque /bill of exchange or authorisation of credit card transaction.

6. Delivery

- (a) Delivery will be deemed to have been effected when the Goods are delivered to the Customer or order of the Customer 's agents.
- (b) Time of delivery is not of the essence.
- (c) The Company shall not be liable for any loss whatsoever arising caused by its non-delivery or by the failure to make Goods ready to collect on the due date.
- (d) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment and such invoice shall be payable as in Clause 5a. When delivery is by instalment or if there be delay in the delivery of any one or more instalments for whatever reason this will not entitle the Customer to treat the contract as repudiated or to damages.
- (e) Where the delivery is refused by the Customer or is delayed, suspended or made in instalments at the request of the Customer or where the Company is unable to deliver the Goods due to circumstances beyond its control, the Company on giving notification of readiness to deliver shall be entitled to treat the contract as fulfilled and place the Goods into store. Delivery will then be deemed to have taken place for invoicing and payment as in Clause 5a and the passing of risk. The Company at the Customer's request shall and in any event may arrange insurance and payment covering the major perils endorsing its own interest. The cost of storage and any insurance of the Goods shall be for the Customer's account.
- (f) When the Company conveys the Goods the Customer shall be responsible for providing proper unloading facilities (including adequate plant and labour) and storage facilities.

7. Risk and Passing of Title

- (a) Goods supplied by the Company shall be at the Customer's risk immediately on delivery in accordance with Clause 6a and the Customer should therefore be insured accordingly.
- (b) Ownership of the Goods supplied hereunder will pass to the Customer when the Goods the subject of this contract and all other Goods the subject of any other contract between the Company and the Customer which at the time of payment of the full price of the Goods sold under this contract, have been delivered to the Customer but not paid for in full, have been paid for in full.
- (c) Until full payment has been received by the Company, the Customer shall hold the Goods in a fiduciary capacity for the Company in a manner which enables them to be identified as the Goods of the Company and the Customer shall immediately return the Goods to the Company should its authorised representative so request. All the normal incidents associated with a fiduciary relationship shall apply.
- (d) The Customer's right to possession of the Goods shall cease if it does anything or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any assets or would entitle any person to present a Petition for winding up.
- (e) The Customer grants the Company an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing any such Goods the property in which has remained in the Company under Clause 7 hereof. The Company shall not be responsible for and the Customer will indemnify the Company against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.
- (f) If the Goods the property of the Company are admitted with the Goods the property of any person other than the Customer the product thereof shall be deemed to be owned in common with that other person.
- (g) The Customer is licensed by the Company to process the Goods but in so doing confirms a bailment for processing with the Company. The new product or products or any chattel created shall be separately stored and marked so as to be identifiable as the property of the Company as bailor.

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8. Lien and Stoppage

- (a) Until the title in the Goods has passed to the Customer the Company has the right to withhold delivery in any of the circumstances mentioned in Clause 5.
- (b) When the title on Goods has passed to the Customer before payment for them is received by the Company in any of the circumstances mentioned in Clause 5c then the Company has: -lien on the Goods so long as the Company is in possession of them; right of stoppage in transit; and right of resale.
- (c) Nothing in this Clause shall affect the rights given to the Company by Sections 38-40 of the Sale of Goods Act 1979.

9. Inspection/Shortage/Defects

- (a) The customer is under a duty wherever possible to inspect the Goods on delivery or on collection as the case may be.
- (b) Where the Goods cannot be examined the carrier's note and the Company's delivery note as appropriate shall be marked "not examined" and the goods duly examined by the customers authorised representative within 3 days.
- (c) The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of Clauses 9a and 9b are not complied with, and, in the event, will be under no liability if a written complaint is not delivered to the Company within three (3) days of delivery detailing the alleged defect or shortage.
- (d) Damage in transit by a carrier must also be notified to it within the time imposed by its contract of 48 hours.
- (e) Unless otherwise specified and subject to Clause 9c and Clause 9d all Goods manufactured and supplied by the Company are guaranteed against faults in workmanship or materials which have been notified to it within Two (2) months of delivery and will be repaired or replaced by it free of charge as soon as reasonably practical PROVIDED THAT no liability arising out from any of the following circumstances shall be accepted by the Company: - work carried out by others to the Goods; Customer's neglect or misuse; unsuitability of the Goods for use with other materials unless the Customer has previously notified the Company in writing of the specific materials with which the Goods are to be used and failure to give reasonable opportunity for the Company to inspect, repair or replace Goods.
- (f) Returns of either defective or non-defective Goods must be cleared with the Company before their return. In the case of defective Goods returned with prior approval for the Company to replace, these must be returned to the Company deliver paid. In the case of non-defective Goods approved for return, these must be returned to the Company works delivery paid and, in addition, the Company reserves the right to charge Fifteen per cent (15%) handling charge or £25 whichever is the greater.

10. Liability

- (a) The Company shall not be liable for any consequential loss or indirect loss suffered by the Customer whether this loss arises from breach of duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be: loss of profits, loss of contracts, delay in work schedule, damage to property of the Customer or anyone else, and personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence), site labour cost including removal, replacement or making good or delay or disturbance to other works.
- (b) The Company's total liability for any one claim or the total of all claims (other than personal injury claims arising from the Company's negligence) arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) is limited to the invoiced value of the goods supplied.
- (c) The Customer will keep the Company indemnified against all actions, costs, claims and liability arising from faulty or unsuitable instructions given by the Customer or from allegations of breach of the Intellectual Property rights or a third party arising out of the Customer's instructions.
- (d) In the case of Goods manufactured by the Company, the Company gives no representation, warranty or condition whatsoever that the sale or use of the Goods will not infringe patent, copyright or other Intellectual Property rights of any other person, firm or company

11. Force Majeur

- (a) The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control. Non-exhaustive illustrations of such circumstances would be; act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lock-outs, local, national or supra-national government action or regulations (UK or otherwise), delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities.
- (b) If the circumstances preventing delivery are still continuing Three (3) months after the Customer receives the Company's notice, then either party may give written notice to the other cancelling the contract. If the contract is cancelled in this way, the Company will refund any payment which the Customer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Customer) but the Company will not be liable to compensate the Customer for any further loss or damage caused by failure to deliver.

12. Documentation

- (a) Catalogues, technical circulars, price lists, software and other literature issued by the Company are for the Customer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.
- (b) The Customer undertakes with the Company that it will ensure compliance so far as is reasonably practical by its servants, agents, licensee and customers with any instructions given by the Company or the manufacturer for the purpose of ensuring that the Goods will be safe and without risk to health when properly used and will take any other steps or precautions having regard to the nature of the Goods as are necessary to preserve the health and safety of persons handling or using them

13. Protection of Intellectual Property

- (a) The trademarks, trade names, know-how, copyrights, design rights, goodwill, patents and all other proprietary rights (the Intellectual Property) arising out of or existing in or upon the Goods or the documentation referred to in Clause 12 are the property of the Company.
- (b) The Customer shall not cause or permit anything which may damage or endanger the Intellectual Property of the Company or the Company's title to it nor assist nor allow others to do so and shall maintain as confidential both during the Contract as well as at all times thereafter all information relating to the Company the Goods and the Intellectual Property.
- (c) The Customer shall notify the Company of any suspected infringement of the Intellectual Property.
- (d) The Customer shall not tamper with any markings or nameplates or other indications of the source of origin of the Goods which may be placed by the Company upon the Goods.
- (e) The Intellectual Property is licensed on a non-exclusive basis to the Customer but such licence shall automatically be revoked in the event that any of the circumstances mentioned in Clause 5 apply and in the event that payment is not made in accordance with Clause 5.

14. Notices

Any notice to be served on either of the parties by the other shall be in writing and sent to the last known address of the recipient or to such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first-class post Forty-Eight (48) hours after posting and if by telex or facsimile transmission when despatched.

15. Assignment

The Customer shall not assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior consent of the Company.

16. Proper Law and Jurisdiction

The contract shall be governed and construed in accordance with English Law (including English Conflict of Laws) and all disputes arising in connection with the contract shall be submitted to the jurisdiction the English Courts.

17. Headings

The headings of the conditions are for convenience only and shall have no effect on the interpretation thereof.