

# STANDARD TERMS & CONDITIONS FOR THE SALE OF GOODS AND/OR SUPPLY OF SERVICES

1. INTERPRETATION
    - 1.1 In these conditions:
      - “Buyer means the person(s) or company by whom the goods are purchased/or to whom the Services are supplied;
      - “Contract” means the standard terms and conditions of sale and/or supply of services set out in this document;
      - “Contract” means the contract between the Seller and the Buyer for the sale and purchase of the Goods and/or supply of services;
      - “Delivery Point” means the place where delivery of the Goods is to take place under Condition 4;
      - “Goods” means any goods which the Seller is to supply or has supplied (including any of them or any part of them);
      - “Seller” means Worsley Plant Ltd (company registration number 3680407);
      - “Services” means the repair, servicing or maintenance of goods in the possession of the Buyer;
    2. FORMATION
      - 2.1 Subject to any variation under Section 2.4 these Conditions form part of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation or order or similar document);
      - 2.2 All orders from the Buyer for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these conditions;
      - 2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order specification or similar document will form part of the Contract simply as a result of a reference to such document in the Contract;
      - 2.4 Any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Seller. This shall not exclude the Seller’s liability for any fraudulent representation;
      - 2.5 No order placed by the Buyer shall be accepted by the Seller until an advice note is issued by the Seller or the Seller delivers the goods or provides the Service to the buyer (whichever is earlier);
      - 2.6 The Buyer must ensure that the terms of in order and any applicable specification are accurate;
      - 2.7 Any quotation given by the Seller to the Buyer shall unless earlier withdrawn or unless the quotation otherwise states, be open for acceptance for a period of thirty days commencing on the date of the quotation;
      - 2.8 No order which the Seller has accepted may be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of such cancellation.
    3. DESCRIPTION
      - 3.1 The Contract is not a contract for sale of goods by description;
      - 3.2 All drawings, descriptive matter, specification and advertising issued by the Seller and any descriptions or illustrations contained in the Seller’s catalogue or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of the Contract.
    4. DELIVERY PERFORMANCE
      - 4.1 Delivery of the Goods shall be made at the Seller’s place of business or if some other place for delivery is agreed by the Seller in writing by delivery of the Goods to that place;
      - 4.2 Where delivery of Goods shall be made at the Seller’s place of business the Seller shall notify the Buyer when the Goods are ready for delivery;
      - 4.3 The Goods may be delivered by the Seller before any specified date upon giving reasonable notice to the Buyer;
      - 4.4 Where delivery of the Goods shall be made at the Seller’s place of business the Buyer will take delivery of the Goods within 14 days of the Seller giving it notice that the Goods are ready for delivery;
      - 4.5 The Goods shall be delivered by such means as the Seller thinks fit;
      - 4.6 Where the Delivery Point is not the Seller’s place of business the Seller shall arrange for carriage of the goods to the Delivery Point. The carrier shall be deemed to be the buyer’s agent except for the purposes of as 44, 45 and 46 Sale of Goods Act 1979 as amended by Sale and Supply of Goods Act 1994 or any subsequent enactment;
      - 4.7 Delivery of the Goods to the Buyer may be made at any time of the day;
      - 4.8 Any dates specified by the Seller for delivery of the goods and/or completion of the Services are approximate only if no dates are so specified, delivery of the goods and/or completion of the Services will be within a reasonable time;
      - 4.9 Subject to the other provisions of these Conditions the Seller will not be liable for any loss (including loss of profit) cost of damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods or Services (even if caused by the Seller’s negligence);
      - 4.10 The Buyer must accept delivery of the Goods and pay for them in full unless the delay exceeds 6 months;
      - 4.11 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licenses or authorisations required to enable to Goods to be delivered on time (except because of the Seller’s fault)
        - 4.11.1 Risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller’s negligence)
        - 4.11.2 the Goods will be deemed to have been delivered; and
        - 4.11.3 (without prejudice to its other rights) the Seller may
          - 4.11.3.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including storage and insurance); and
          - 4.11.3.2 sell any of the Goods at such price as is reasonably obtainable in the circumstances and (after deduction all amounts payable by the Buyer to the seller) account to the Buyer for the excess over that price under this Contract or charge the Buyer for any shortfall below the price under this contract.
      - 4.12 Performance of the Services will only take place at the Delivery Point for the relevant Goods unless the seller otherwise agreed in writing.
    5. NON-DELIVERY LOSS
      - 5.1 The Seller shall not be liable for any non-delivery of the Goods or for loss of any separate package forming part of the Goods (even if caused by the Seller’s negligence unless notice is given to the carrier at the time of delivery of the Goods on the carrier’s delivery docket and to the Seller within 5 days of the date when the Goods would in the ordinary course of events have been received if the Goods are not delivered and within 5 days of delivery where any separate package forming part of the Goods has been lost).
      - 5.2 Any liability of the Seller for the Goods and/or the Services shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for the Goods and/or the Service.
      - 5.3 A qualified signature on a carrier’s delivery note shall not be written notice to the Seller for the purpose of these Conditions.
    6. FORCE MAJEURE
      - 6.1 The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of the contract (subject to Condition 11) because of any delay in performing or any failure to perform any of the Seller’s obligations under the Contract if the delay or failure was due to any cause beyond the Seller’s reasonable control.
      - 6.2 Without prejudice to the generality of Condition 6.1 the following shall be included as causes beyond the Seller’s reasonable control:
        - 6.2.1 government actions, war, threat of war, not civil disturbance, sabotage or requisition
        - 6.2.2 Act of God, fire, flood, epidemic or accident
        - 6.2.3 Import or export regulations or embargoes
    - 6.2.4 Labour disputes including disputes involving the Seller’s workforce of any carrier or supplier of materials to the site
    - 6.2.5 Inability to obtain or delay in obtaining supplies or suitable material fuel pans machinery or labour, or
    - 6.2.6 Accident to or breakdown of machinery or transportation problems
  7. RISK/TITLE/LIEN
    - 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or deemed delivery to the Buyer or its agent (subject to Condition 4.11) and subject to any risk of deterioration in the Goods necessarily incidental to the course of transit passing to the Buyer;
    - 7.2 The property in the Goods (both legal and equitable) shall not unless otherwise agreed pass to the Buyer until the seller has received in full (in cash or cleared funds);
      - 7.2.1 the price of the Goods plus all carriage insurance duties and value added tax payable in connection with the goods and their delivery and
      - 7.2.2 all other sums (whether payable under the Contract or not) which are or will afterwards become due or owing from the Buyer to the Seller
    - 7.3 Until the property in the Goods has passed to the Buyer; the Buyer shall:
      - 7.3.1 hold the Goods on a fiduciary basis as the Seller’s bailee
      - 7.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or third parties and identify them as the Seller’s property
      - 7.3.3 not destroy or deface any identifying marks on the Goods or their packaging
      - 7.3.4 keep the Goods insured on the Seller’s behalf for the full price of the Goods against “all risks” to the reasonable satisfaction of the Seller and upon request produce the policy of insurance to the Seller; and
      - 7.3.5 hold all proceeds of the insurance referred to in Condition 7.3.4 on trust for the Seller and shall not mingle them with any other money nor pay the proceeds into an overdrawing bank account
    - 7.4 At any time before the property in the goods has passed to the Buyer the Seller may by written notice end the Buyer’s right to use and sell the Goods and the Buyer shall immediately return the Goods to the Seller (at the Buyer’s cost). After giving such notice the Buyer shall no longer be in possession of the Goods with the consent of the Seller and the Seller and/or its representative(s) may enter any premises where the Goods are or are reasonably believed to be and remove the Goods;
    - 7.5 The Seller shall be entitled to a general lien on all Goods of the Buyer in the Seller’s possession for the unpaid price of any other Goods sold and delivered and/or the supply of Services to the Buyer by the Seller under the same or any other contract;
    - 7.6 Nothing in this Condition 7 shall change the Buyer’s obligation to pay for the Goods
  8. PRICE
    - 8.1 Subject to Condition 8 the price for the Goods and/or the Services shall be the price set out on the acknowledgement of order form issued by the Seller or if an acknowledgement of Order has not been issued on the invoice or quotation issued by the Seller
    - 8.2 The price for the Goods and/or the Services is exclusive of any VAT or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods and/or Services;
    - 8.3 The price for the Goods unless otherwise stated is given on an ex-works basis and the Buyer shall in addition pay the Seller’s charges for delivery when it is due to pay for the Goods
    - 8.4 The Seller may vary the price for the Goods and/or Services at any time between the date of issue of the acknowledgement of order and the date of the Seller’s invoice to reflect any increase in the cost to the Seller of providing the Goods and/or Services
  9. PAYMENT
    - 9.1 The Buyer shall unless otherwise agreed in writing pay the Seller a deposit of 10% of the price for the Goods within 7 days of the date of issue of the acknowledgement of order
    - 9.2 The Seller may invoice the Buyer for due balance of the price (excluding any deposit) of the goods and/or Services at any time after delivery or deemed delivery of the Goods and or completion of the supply of the Services
    - 9.3 Time for payment shall be of the essence and failure of the Buyer to make any payment under the contract on the due date shall entitle the Seller at its option to treat the Contract as repudiated
    - 9.4 Payment of the price for the Goods is unless otherwise agreed due to be paid by cheque to the Seller within 30 days of the date of the earlier of:
      - 9.4.1 notification by the Seller to the Buyer that the Goods are ready for delivery where the Delivery Point is the Seller’s place of business
      - 9.4.2 Delivery of the Goods where the Delivery Point is not the Seller’s place of business
    - 9.5 Payment of the price for the Services is unless otherwise agreed due to be paid by cheque to the Seller within 30 days of the completion of the supply of the Services
    - 9.6 No payment shall be deemed to have been received until the Seller has received cleared fund
    - 9.7 All payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision
    - 9.8 The Buyer shall make all payments due under the Contract without any deduction whether by way of counterclaim or otherwise
      - 9.8.1 except for any liquidated sum due and payable by the Seller to the Buyer; or
      - 9.8.2 unless such deduction has been agreed in advance with the Seller
    - 9.8.3 unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer;
    - 9.9 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Seller may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 4% above National Westminster Bank PLC’s base rate from the time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest)
    - 9.10 The Seller may at its option provide a discount to the Buyer such discount to be individually negotiated
  10. QUALITY
    - 10.1 The Seller warrants that (subject to other provision of these Conditions) upon delivery the Goods will:
      - 10.1.1 be of satisfactory quality
      - 10.1.2 be reasonably fit for the purpose for which the Goods are to be used which the Buyer has notified to the Seller
    - 10.2 The Seller warrants that the Services will be carried out with reasonable skill and care
  11. LIMITATION OF LIABILITY
    - 11.1 All warranties, conditions or other terms implied by statute or common law (except the condition and warranty implied by s12 Sales of Goods Act 1979 as amended by Sale and Supply of Goods Act 1994 or any subsequent enactment) are excluded from the Contract
    - 11.2 Nothing in these conditions shall exclude or limit the liability of the Seller for death or personal injury caused by the Seller’s negligence
    - 11.3 Except as set out in Conditions 11.1 and 11.2
      - 11.3.1 the Seller shall not be liable to the Buyer for any consequential loss (including loss of profit) costs, damages, charges or expenses arising out of the delivery, non-delivery, supply or use of the Goods or performance of the Services (even if caused by the Seller’s negligence); and
      - 11.3.2 the Seller’s liability under the contract shall not exceed the amount paid to it for the claim under its insurance policy covering such risks. The Buyer acknowledges that delay in notifying may prevent the Seller recovering any money under such policy
  - 11.4 The Seller shall not be liable for any defect in the quality of the Goods and/or Services (whether in contract negligence or otherwise) unless:
    - 11.4.1 the Buyer gives written notice of the defect to the Seller and (if the defect is a result of damage in transit) to the carrier within 7 days of:
      - 11.4.1.1 the date the Buyer receives the Goods (where the defect would be apparent to the Buyer upon a reasonable inspection);
      - or
      - 11.4.1.2 the date when the Buyer new or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and
    - 11.4.2 the Seller or his agent is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) such Goods to the Seller’s place or business for the delaminating to take there
  - 11.5 The Seller shall not be liable for any defect in the quality of Goods and/or Services (whether in contract negligence or otherwise); if:
    - 11.5.1 the Buyer makes any further use of such Goods after giving such notice or
    - 11.5.2 the defect arises because of carelessness or improper treatment or inadequate lubrication or neglect or improper adjustment or because the Buyer fails to follow the Seller’s oral or written instructions as to the storage, use or of the Goods or (if there are none) general trade practice; or
    - 11.5.3 the Buyer alters or repairs such Goods without the prior written consent of the Seller;
  - 11.6 If the Buyer makes a valid claim against the Seller within 6 months of the date of delivery or deemed delivery of the Goods or completion of performance of the Services based on a defect in the quality of the Goods or the Services the Seller at its option:
    - 11.6.1 repair or replace such Goods or the Goods upon which the Services were performed (or in either case the defective part) or refund the price of such defective Goods at the pro-rata contract rate or refund the price for the defective part of the Services on a pro-rata basis; or
    - 11.6.2 (if the Seller has not manufactured the Goods or the pan of such Goods which is defective) at the Buyer’s request assign to the Buyer such assignable rights (if any) as the Seller has against its own supplier of such Goods or the relevant part of such Goods
  - 11.7 If the Seller complies with Condition 11.6 it shall have no further liability for any defect in the quality of the Goods or the Services (whether in contract negligence or otherwise)
  - 11.8 Where the Goods or any part of them are manufactured by or on behalf of the Seller to the design or specification of the Buyer then the Buyer will indemnify the Seller against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Seller as a result of any infringement of any patent, trade mark, registered design, copyright, topography or other intellectual property rights belonging to any third party. If any claim is brought or threatened against the Seller in respect of an infringement the Seller will be entitled to suspend further deliveries of Goods to the Buyer
  - 11.9 The Seller reserves the right to:
    - 11.9.1 refuse, delay or accept in pen only any order for Goods if there are reasonable technical or commercial grounds for so doing;
    - 11.9.2 modify the specification of any Goods ordered without notice provided the modification does not materially degrade the performance of the Goods
12. TERMINATION
  - 12.1 Without prejudice to any other rights which the Seller may have the Seller shall be entitled to immediately terminate the Contract and demand payment of any amount due or accruing to the Seller whether under the Contract or otherwise retain any deposits, re-sell the Goods and/or withhold or cancel any deliveries (whether in installments or otherwise) due to be made if any of the following circumstances or events occur:
    - 12.1.1 the Buyer is in breach of any of its obligations under the Contract which if capable of remedy the Buyer was not remedied within 30 days of receiving written notice from the Seller; or
    - 12.1.2 any Distribution Agreement between the Seller and any third party is terminated; or
    - 12.1.3 the Buyer is unable to pay its debts in the ordinary course of business or enters into liquidation whether compulsory or voluntary (except for the purpose of reconstruction or amalgamation) or has a Receiver appointed or makes any arrangement of composition with its creditors or goes into administrative receivership;
    - 12.1.4 the Buyer suffers a distress or other legal process to be levied, enforced or sued upon or against any part of the property, assets or revenue of the Buyer which is not discharged or stayed within 7 days
  13. GENERAL
    - 13.1 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable or unenforceable (in whole or in part) shall to the extent of such invalidity, voidness, voidability or unenforceability be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected
    - 13.2 A waiver by the Seller of any breach of the Contract by the Buyer will not be construed as a waiver of any subsequent breach of the same of any other provision
    - 13.3 The Seller may assign licence or sub-contract all or any part of its rights or obligations under the Contract without the Buyer’s consent
    - 13.4 The contract is personal to the Buyer who may not assign licence or sub-contract all or any of its rights or obligations under the Contract without the Seller’s consent
    - 13.5 The formation construction performance, validity and all aspects of the Contract are governed by English Law and the Buyer submits to the exclusive jurisdiction of the English Courts
  14. COMMUNICATION
    - 14.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by first class post or sent by facsimile transaction;
      - 14.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
      - 14.1.2 (in the case of the communication to the Buyer) to the registered office of the addressee (if it is a company) or (if any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Buyer
    - 14.2 Communications addressed to the Seller shall be marked for the attention of the Managing Director.