

A.K.WAUGH LIMITED - CONDITIONS OF SALE (revised 06.09.2007)

DEFINITIONS

In these Terms of Sale the following meanings shall apply :
"We" and "Us" means A.K. Waugh Limited and "Our" shall be interpreted accordingly
"You" means the person their employees or agents seeking to purchase Goods from Us and "Your" shall be interpreted accordingly.
"the Goods" means the goods and/or services to be supplied by Us.
"Company Signatory" means a manager employed by Us.
"the Terms" means these terms and any special terms agreed in writing between a Company Signatory and You.
"Consumer" means any natural person acting for purposes outside their trade business or profession as defined by the Unfair Contract Terms Act 1977.

SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.

THE CONTRACT

2.1 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory. Any contrary or additional terms unless so agreed are excluded. Written quotations are open for 30 days.

2.2 Orders may be cancelled only with the written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation.

2.3 We shall not be liable for any misrepresentation made by Us Our employees or agents to You as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by a Company Signatory and/or is fraudulent. Our brochures and other literature are for Your guidance only and (in the absence of fraud on Our part) shall not constitute representations by Us.

PRICE

3.1 The ex-works price of the Goods shall be as stated or quoted and is exclusive of VAT. A separate charge shall be made for delivery and all pallets and/or containers which You fail to return. Any discounts deductions or rebates agreed are only available if the price is paid by the due date.

3.2 Prices stated or quoted are applicable to the quantity specification delivery dates and information provided by You. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.

PAYMENT

4.1 If We have agreed in writing to give You credit all accounts are due for payment 30 days after the date of Our invoices.

4.2 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or contract if the arrangements for payment or Your credit rating is not satisfactory to Us.

4.3 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

DELIVERY

5.1 Delivery will be effected when the Goods are collected or arrive at the delivery address immediately prior to unloading for which You shall be responsible.

5.2 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be the essence of the contract.

5.3 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in the delivery of the Goods or failure to deliver the Goods in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.

5.4 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim which You may have in respect of one instalment shall not affect Your liability in respect of any other instalment.

5.5 If You fail to take delivery accept or collect the Goods within the agreed time at Our discretion We may make an additional charge, invoice You for the Goods or treat the contract as repudiated and in any case recover Our losses from You.

5.6 We reserve the right to refuse to deliver the Goods if the driver considers that delivery cannot be effected safely at the delivery address.

5.7 You will indemnify us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.

INSPECTION

6.1 You shall inspect the Goods at the place and time of loading (collection) or unloading (delivery) but nothing else in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

6.2 Unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of load-

ing (collection) or unloading (delivery) of any claim for short delivery or failure to conform to the contract apparent on inspection the Goods will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled and waive any right to reject the Goods.

6.3 Our liability for short delivery or failure of the Goods to conform to the Contract which is apparent on inspection is limited to supplying the Goods as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Goods to Conform to the Contract which is apparent on inspection howsoever caused. You remain liable to pay the full invoice price of Goods delivered or available for delivery in accordance with the Contract. Any other claim for damages is subject to Clause 8.

TITLE & RISK

7.1 Risk in the Goods shall pass to You when the Goods are delivered. The title to the Goods shall remain with Us until You pay all sums owing to Us whether in respect of this contract or otherwise and You shall hold the Goods as our fiduciary agent and bailee.

7.2 We shall be entitled at any time to recover any or all of the Goods to which We have title and for that purpose We Our employees or agents may with such transport as necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

LIABILITIES

8.1 In this Clause "the Defect" shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.

8.2 Nothing in these terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation.

8.3 If You deal as a Consumer any provision of these Terms which is of no effect shall not apply. The Statutory rights of a Consumer are not affected by these Terms.

8.4 Subject to Clauses 8.2 and 8.3 of these Terms We shall not be liable by reason of misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 8.5 below.

8.5 Where but for the effect of Clause 8.4 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the conditions set out in Clause 8.6 below shall at Our sole discretion either repair the Goods at Our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.

8.6 We will not be liable under Clause 8.5 :

- if the Defect arises from fair wear and tear
- if the Defect arises from your negligence wilful damage misuse alteration or repair of the Goods or abnormal working conditions
- unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with
- if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You give us written notice within 3 working days of the time of unloading.

8.7 If the Goods are not manufactured by Us or have been processed by a third party whether at Our or Your request Our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of these Goods.

8.8 If the Goods are supplied to a drawing design measurement or specification provided in writing by Us then subject to Clauses 8.2 and 8.3 of these Terms We shall not be under any liability for damages whatsoever or under Clause 8.5 of these Terms except in the proportion and to the extent that such damages have arisen primarily from Our breach of contract or negligence.

8.9 We will not be liable under Clause 8.8 if :

- material information is withheld concealed or misrepresented by You; and/or
- the design measurement or specification provided by Us is not in writing.

8.10 Subject to Clauses 8.2 and 8.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof

- for any loss or profit, business, contracts, revenues or anticipated savings, or
- for any special, indirect or consequential damage of any nature whatsoever.

8.11 Except where You deal as a Consumer You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by a third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that losses damages penalties costs and expenses are due to Our negligence.

8.12 Without prejudice to any other provision of these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

NON-PAYMENT/INSOLVENCY

9.1 "Insolvent" means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease or carry on Your business.

9.2 "Associated Company" means Your subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary of such holding company, or any company over which Your directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.

9.3 If You fail to pay any invoice or any sum due to Us under any contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company's constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-

- require payment in cleared funds in advance of further deliveries
- charge interest on the monies outstanding at the rate of 4 per cent above The Royal Bank of Scotland plc's base rate in force from time to time from the due date until date of payment after as well as before judgement.
- cancel or suspend any further deliveries to You under any contract without liability on Our part
- without prejudice to the generality of Clause 7 of these Terms exercise any of Our rights pursuant to that Clause
- terminate this or any other contract with You or any As associated Company without liability on Our part.

9.4 Except where You deal as a Consumer You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.

GENERAL

10.1 This contract shall be governed and interpreted according to the Law of Scotland and You agree to submit to the non-exclusive jurisdiction of the Scottish Courts.

10.2 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended or re-enacted.

10.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

10.4 Except as provided otherwise in these Terms We shall not be liable for any delays or failures to perform any of Our obligations under this contract due to any cause beyond Our reasonable control including industrial action.

10.5 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

10.6 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

10.7 This contract is personal to You and in may not be assigned.

10.8 This page is available on our web site, WWW.AKWAUGH.COM