



# TERMS & CONDITIONS OF QUOTATION & SALE OF GOODS

## INTERPRETATION

### 1.1 In these Conditions:

**Buyer** means the person who accepts a quotation of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller in Writing;

**Goods** means those goods as specified in the order or quotation annexed which the Seller is to supply in accordance with these Conditions;

**Seller** means Walmsleys Limited (registered number 5855707);

**Contract** means any contract between the Buyer and Seller for the sale of Goods incorporating these Conditions;

**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;

**Writing includes email, facsimile transmission and** comparable means of communication.

1.2 Any reference in these Conditions to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as, from time to time, amended, consolidated, modified, replaced, re-enacted or extended.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

## 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Written order of the Buyer which is accepted by a Written acknowledgement of order issued by the Seller.

2.2 The Seller delivers the Goods to the Buyer subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.

2.3 No variation to these Conditions shall be binding unless agreed in Writing by an authorised representative of the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods (unless confirmed by the Seller in Writing.) In entering into a Contract, the Buyer acknowledges that it does not rely on such representations which are not so confirmed. 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.

2.5 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.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

## 3. VALIDITY

3.1 A quotation by the Seller does not constitute an offer.

3.2 Unless otherwise stated in the quotation, the quoted prices are valid (subject to condition 6), provided the Buyer places its purchase order within 30 days after the date of the quotation and the Seller has not previously withdrawn the quotation.

3.3 The Seller's acceptance of the Buyer's order (including telephone orders) shall be effective only where such acceptance is in Writing.

## 4. PLACE OF DELIVERY

4.1 Unless otherwise agreed in writing by the Seller, then delivery of the Goods means delivered FCA, Walmsleys Ltd, United Kingdom (the meaning given to such terms in the ICC Incoterms as revised from time to time).

4.2 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

another place for the delivery is agreed by the Seller, then the Seller delivering the Goods to that place.

4.3 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence. If no dates are specified, delivery will be within a reasonable time.

4.4 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:

4.4.1 store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

4.4.2 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.

4.5 Delivery shall be evidenced by the return to the Seller of its authorised carriers' official packing/delivery note signed as acknowledgement of receipt of the Goods and shall constitute absolute proof of delivery of the items specified in it.

4.6 Where Goods are to be delivered by instalments, each delivery constitutes a separate contract and failure by the Seller to deliver any one of more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

## 5. PACKING

Unless otherwise stated in the Contract or order acknowledgement, the quoted prices include packing to Walmsleys Limited's standards.

## 6. ESCALATION

Unless otherwise stated in a quotation, the prices quoted are based on the current cost of wages, material, transport and statutory obligations. Should any increases or reductions in any such costs occur after the date of a quotation then the prices quoted shall be reviewed and a re-quotation offered.

## 7. WORK ON BUYER'S SITE

Unless otherwise stated in a quotation the quoted prices do not include services of equipment for unloading, transporting, erection, commissioning, start-up, operation, tests or maintenance on Buyer's site of Goods (including spare or replacement parts) included in the Buyer's purchase order.

## 8. CIVIL WORK

The Seller does not undertake any civil work (including but not limited to clearing, grading, building, alterations to buildings, holes in and cutting and drilling of walls, floors and ceilings, concrete foundations for Goods or other building or joinery work). All such civil work is excluded from the quotation and is the sole responsibility of the Buyer.

## 9. PRICE OF THE GOODS

9.1 The price of the Goods shall be that specified in the Contract.

9.1.1 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

9.2 All prices are given by the Seller on an ex-works basis, (unless otherwise stated in the quotation or Contract) 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, packing and insurance.

9.3 Unless otherwise stated, the price is exclusive of any applicable Value Added Tax, or other similar tax or duty payable by the Buyer which shall be added to the price.



## TERMS & CONDITIONS OF QUOTATION & SALE OF GOODS

### 10. TERMS OF PAYMENT

- 10.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to payment for the price of the Goods, (including any carriage costs and VAT) within 30 days of the invoice. Any cash discount shall be effective from the date of invoice and allowed only on the goods value included in the invoice value.
- 10.2 The Buyer is not entitled by reason of any set-off, counterclaim or abatement or analogous deduction to withhold payment of any amount due to the Seller.
- 10.3 Time of payment shall be of the essence of a Contract. Receipts for payment will be issued only upon request.
- 10.4 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 10.5 If the Buyer fails to make any payment on the relevant due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 10.5.1 cancel the Contract or suspend any further deliveries to the Buyer; and
- 10.5.2 charge the Buyer interest (both before and after any judgment) on any amount unpaid, at the rate of two (2) per cent. per annum above the Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 10.6 The Seller has a general lien on all property of the Buyer in the Seller's possession (although the Buyer may have paid in full for it) in satisfaction of any amount owed by the Buyer to the Seller under the Contract. The Seller may do anything necessary to put such property into a saleable condition; sell such property on such terms as it may think fit and retain from the proceeds of sale an amount equal to the amount owed by the Buyer to the Seller under any Contract and the costs or expenses incurred by the Seller in putting the property into saleable condition and selling it.
- 10.7 The Seller is entitled to offset any amount owing to it from the Buyer against any amount to the Buyer by the Seller.

### 11. DUTIES AND TAXES

All payments of whatever nature to be paid in Buyer's country by law or any requirement having the force of law to any authority or organisation, e.g. but not limited to, payments of import and excise duties, all taxes whether on wealth, property, profits, income, sales, purchases, value added, use or otherwise and all other assessments, charges, fees or imposts are to be borne and paid by Buyer or if paid by Seller or Seller's employees or by any supplier of goods or services to Seller or any employee of such supplier then Buyer is to reimburse Seller the amount so paid within 30 days of the payment thereof but the provisions of this condition do not apply to payments which this Contract specifically states are to be borne and paid by the Seller.

### 12. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Seller) if it is prevented from or delayed in the carrying on of its business or the performance of the Contract due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or the discovery by the Seller of any defects in castings manufactured by the Seller for the Contract.

### 13. INSPECTION BEFORE DELIVERY

- 13.1 The Buyer (or the Buyer's authorised representatives) shall have reasonable access to the Seller's sub-contract works during normal working hours to inspect the Goods and any spare parts during and/or at completion of manufacture to check that they are in conformity with the Contract.
- 13.2 The Seller shall provide without charge to the Buyer (or the Buyer's authorised representative) such assistance, instruments, apparatus etc, as is reasonably necessary to carry out such inspection.
- 13.3 The Buyer shall bear the cost of travel, board and accommodation and all other costs associated with the inspection other than those arising from condition 15.4.

### 14. SUPPLIERS

The Seller shall have the power to purchase any part of the Goods, spare parts or services from any supplier. Any exercise of such power shall not relieve Seller from its responsibility for the performance of its obligations under the Contract. The Seller may sub-contract any of its obligations under the Contract.

### 15. WARRANTIES & LIABILITIES

- 15.1 The Seller at its expense shall:

- 15.1.1 repair (or at its option replace) such Goods (or the defective part) which fails due solely to the use of defective materials or defective workmanship provided the Goods or the defective part concerned has been properly stored, installed, used and maintained by the Buyer;
- 15.1.2 effect delivery of the repaired or replacement part;
- 15.1.3 correct any defective information furnished by the Seller; and
- 15.1.4 correct any defective workmanship performed by the Seller at the Buyer's mill site,

provided that the defective part is proved to have failed, the information or workmanship is proved to be defective during the period of this warranty and provided the Buyer advises the Seller in writing within 14 days of the discovery of the failure of the part, defective information or defective workmanship.

- 15.2 Failed parts which are to be repaired under this warranty and which the Seller considers cannot be properly repaired on a mill site shall be returned freight and insurance prepaid by the Buyer by such method as the Buyer shall choose to the manufacturer's works and the Seller shall reimburse the Buyer in an amount equal to what would have been the freight and insurance expense of returning such failed parts by land/sea.
- 15.3 In relation to any goods or spare parts provided by a third party, the Seller does not give any guarantee or other term as to their quality or fitness for purpose or otherwise, but shall where possible assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Seller.
- 15.4 The Seller shall bear all costs and expenses of transport and insurance within the third party manufacturer's country for parts repaired at third party manufacturer's works or for any part supplied to replace a failed part.
- 15.5 The Buyer shall, if so requested by the Seller, return by land/sea to the third party manufacturer's works at the Seller's expense any failed parts which are replaced under this warranty.
- 15.6 In the case of spare parts, information furnished by the Seller or workmanship performed by the Seller on the Buyer's mill site, the period of this warranty shall be 6 months from delivery of the part, the date of furnishing the defective information or the date the defective workmanship was performed as appropriate. In all other cases the period of the warranty shall be either 12 months after the date of first mechanical operation of the failed part or 15 months after the date of completion of delivery of the Goods to the Buyer, whichever period expires first.
- 15.7 The Seller shall have no liability whatever to the Buyer:
- 15.7.1 for roll covers, because of the sensitivity of covers to Buyer's operating, maintenance and storage conditions;
- 15.7.2 for any part which fails due to its design or material where the design or the material was made furnished or specified by the Buyer;
- 15.7.3 if the Buyer alters or repairs such Goods without the written consent of the Seller;
- 15.7.4 for the use by the Seller of any information furnished by the Buyer, for normal deterioration whether under the Contract or from liability implied by arising or under the law (including negligence) or otherwise for defects of whatever kind in Goods, spare parts or information furnished by the Seller or workmanship performed by the Seller on a mill site except for obligations specified in condition 15;
- 15.7.5 for any costs associated with removing, dismantling and re-building machinery to remove and replace the defective part; or
- 15.7.6 for any part which has become defective after being operated outside its design parameters.
- 15.8 For the purposes of this condition 15, "Information" means information, data, advice, recommendations, instructions, drawings and other technical documentation.
- 15.9 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.



## TERMS & CONDITIONS OF QUOTATION & SALE OF GOODS

- 15.10 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within one year from the date of delivery. 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 the Seller shall have no 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. No Goods shall be returned for credit or replacement without full written instructions from the Seller.
- 16. CANCELLATION AND TERMINATION**
- 16.1 If the Buyer cancels the Contract in whole or in part at any time upon written notice to the Seller, the Buyer will pay, forward and accept delivery of all completed work prior to the notice of cancellation. The Buyer will pay all costs already incurred in the completion of outstanding work. A reasonable profit on the completed and uncompleted work will be paid by the Buyer provided however that the total amount paid does not exceed the contract value.
- 16.2 The Seller may terminate the Contract immediately by written notice to the Buyer without incurring liability for such termination if any of the following occur:
- 16.2.1 the Buyer commits a breach of any material obligation of the Contract which can not be remedied or commits a breach of a material obligation which can be remedied and fails to remedy it within thirty (30) calendar days of receiving a Written notice requiring it to be remedied;
- 16.2.2 an encumbrancer takes possession (including an administrative receiver) over any of the property or assets of the Buyer;
- 16.2.3 the Buyer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement or for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors, or another arrangement of similar import;
- 16.2.4 an administrator is appointed in respect of the Buyer;
- 16.2.5 the Buyer goes into liquidation or ceases to carry on its business (in both cases except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by and assume the obligations imposed on that other party under the Contract);
- 16.2.6 the Buyer, being an individual or where the other party is a firm, any partner in that firm, becomes bankrupt or a petition is presented for such bankruptcy or if the other party or any such partner has a receiving order or administration order made against him;
- 16.2.7 anything analogous to the foregoing occurs under the law of any jurisdiction in relation to the Buyer.
- 16.3 Any termination under this condition or under any other condition in the Contract is without prejudice to the Seller's other rights and remedies.
- 16.4 Upon termination or cancellation of the Contract for any reason the Seller shall, without prejudice to its other rights and remedies be paid:
- 16.4.1 the outstanding balance of charges payable for the Goods delivered prior to the date of termination; and
- 16.4.2 the price of materials and Goods ordered for the Goods and sums payable in relation to other commitments entered into in relation to the Goods which the Seller has paid or is legally bound to pay.
- 16.5 Termination of the Contract under this or any other condition shall not affect the continuance of any conditions which are stated or by their nature are intended to continue after termination nor shall it affect any existing obligations already incurred whether relating to payment or otherwise.
- 17. PATENTS**
- 17.1 If an action is brought and on final appeal any Goods or any part thereof are held to infringe letters patent of United Kingdom or of Buyer's country then.
- 17.1.1 the Seller shall indemnify the Buyer of all costs and damages awarded against Buyer in such action and
- 17.1.2 the Seller shall at its option and cost either procure for the Buyer the right to continue using Goods or modify Goods so they become non-infringing.
- 17.2 provided always that the obligations of the Seller specified in condition 17.1 shall not apply to any infringement which is due to Seller having followed a design or instruction furnished by the Buyer, its employees or agents or to the use of Goods or any part thereof otherwise than in the manner and for the purpose described in or reasonably to be inferred from the technical specification referred to in the quotation or to the use of Goods or any part thereof in combination with equipment not supplied by the Seller under a Contract.
- 17.3 This indemnity is conditional on
- 17.3.1 the Buyer giving to the Seller notice of any claim being made or suit threatened or brought not less than 10 days after learning of such a claim or suit; and
- 17.3.2 the Buyer not making any admission prejudicial thereto; and
- 17.3.3 the Buyer permitting the Seller at the Seller's own expense to conduct all negotiations for the settlement of the claim and to conduct any litigation that may ensue and all negotiations for the settlement of such litigation; and
- 17.3.4 the Buyer for the purpose of contesting any such claim providing all available assistance to the Seller who will reimburse the Buyer for all reasonable out of pocket expenses incurred in so doing.
- 17.4 This condition 17 states the entire liability of the Seller for infringement or alleged infringement of letters patent or registered design of the Goods or any part thereof.
- 18. RISK LIABILITY AND INSURANCE**
- 18.1 The risk of loss or damage to each item of Goods and spare parts shall pass to the Buyer from the date of delivery of such item. For the avoidance of doubt,
- 18.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notified the Buyer that the Goods are available for collection; or
- 18.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 18.2 Loss or damage arising from physical injury (including disease or death) to any person or loss of or damage to any property caused by the Seller's negligence or breach of statutory duty but not otherwise shall be borne by the Seller or if caused by the Buyer's negligence or breach of statutory duty but not otherwise shall be borne by the Buyer. The party that bears the risk of loss or damage shall place, maintain and bear the cost of insurance for a minimum of five million pounds sterling (£5,000,000) for such loss or damage from any one cause.
- 19. OWNERSHIP**
- Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title to and in the Goods shall not pass to the Buyer until all sums due by the Buyer to the Seller (including any applicable interest and charges) have been paid in full.
- 20. LIMITATION OF LIABILITY**
- 20.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of
- 20.1.1 any breach of these Conditions; and
- 20.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 20.2 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- 20.3 Subject to conditions 20.1 and 20.2:
- 20.3.1 the total liability of the Seller in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection under or in connection with a Contract, shall be limited to a value of ten per cent. (10%) of the Contract price; and
- 20.3.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.



## TERMS & CONDITIONS OF QUOTATION & SALE OF GOODS

---

### 21. CONDITIONS PRECEDENT

- 21.1 It is a condition precedent of the Contract that the Seller has received all of the following:
- 21.1.1 an effective purchase order;
  - 21.1.2 the Buyer's Written approval of the technical specification enabling Seller to proceed uninterruptedly with manufacture;
  - 21.1.3 the irrevocable letter of credit/bank guarantee of payment (if required by the quotation); and
  - 21.1.4 a copy of the import licence (if required by the governing laws of the country of the Buyer).
- 21.2 The times stated in this quotation for performing Seller's obligations shall be automatically extended by the period after the date of the purchase order to the date upon which all the conditions in 21.1 have been complied with.
- 21.3 However, the Seller shall have the right to terminate the Contract without incurring any liability to the Buyer by notice in writing effective from the date thereof if all the conditions in 21.1 have not been complied with before the expiry of 4 weeks after the date of the purchase order or within such longer period of time as the Seller at its sole discretion may determine.

### 22. CONFIDENTIALITY

- 22.1 Quotations, correspondence, specifications, drawings, designs, plans and sketches submitted by one party to the other and the information contained therein and information otherwise submitted to the other party shall remain the property of the submitting party. The receiving party undertakes to keep the same confidential and not to disclose the same to any third party without the submitting party's written consent except to the extent as may be necessary for proper performance of the Contract, and then only subject to the recipients giving similar undertakings of confidentiality and non-disclosure.
- 22.2 Nothing contained above shall apply to any information:
- 22.2.1 in the receiving party's possession prior to receipt from the submitting party, or
  - 22.2.2 which the receiving party may receive from a third party, or
  - 22.2.3 which is or later becomes public knowledge other than by breach of this condition 22.

### 23. MINIMUM ORDER CHARGE

A Minimum Order Charge of £100 will be invoiced for any Contract received, the price of which is lower than £100 ex works.

### 24. GENERAL

- 24.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and either delivered personally or sent by first class post pre-paid recorded delivery (or airmail if overseas) given to the other party in Writing at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 24.2 If any provision of the Contract is or becomes illegal, void, unenforceable or invalid in any jurisdiction that shall not affect the legality and validity of its other provisions or its enforceability in any other jurisdiction.
- 24.3 The Contract and the Conditions shall constitute the entire agreement between the Buyer and the Seller in respect of the supply of Goods and shall supercede all previous oral or written representations. In particular, the Buyer may not rely on any statements made by any employee, representative or agent of Walmsleys Limited.
- 24.4 The Buyer may not assign or transfer or purport to assign or transfer any of its rights or obligations under the Contract without having obtained the Seller's prior written consent.
- 24.5 The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 24.6 The Contract shall be governed and construed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.