

Wixroyd International Ltd – Conditions of Sale

1. Definitions

In these conditions:

'the Seller' means Wixroyd International Limited

'goods' means any item which is to be sold by the Seller

'the Buyer' means any person, company or organisation which buys or has agreed to buy any goods.

1.1 No employee, agent or salesman has any authority to waive or vary any of these conditions on behalf of the Seller and any variation to these conditions shall be inapplicable unless in writing and signed by a Director on behalf of the Seller.

2. Acceptance of Order

2.1 These conditions shall form part of every contract of sale of goods entered into by the Seller and the placing of an order shall be deemed to be conclusive evidence of the Buyer's acceptance of these conditions.

2.2 The placing of an order by the Buyer, whether or not based upon a quotation, shall not be binding on the Seller, unless accepted in writing.

2.3 The Seller reserves the right to reject any order and shall be under no obligation to acknowledge receipt of an order from the Buyer.

2.4 The Buyer is responsible for ensuring the accuracy of any order placed with the Seller.

2.5 No representations or undertakings made or given on the Seller's behalf prior to contract shall be binding on the Seller, unless incorporated expressly in writing in the contract.

2.6 Goods ordered by the Buyer which are out of stock will be placed on back order unless the Buyer shall specify ex-stock or cancel in its order.

2.7 If the Buyer shall require any change in the terms or arrangements for the performance of the contract it shall inform the Seller promptly and no change will be effective unless and until agreed in writing by the Seller.

2.8 If the Buyer wishes to cancel an order, the Buyer must notify the Seller in writing within 5 days of receipt by the Seller of the order, and any cancellation will only be deemed to have been accepted by the Seller upon the issue by the Seller of an order cancellation acknowledgement.

2.9 The Seller will only accept a call-off order (subject to its absolute discretion) if it is for a maximum duration of 12 months and is accompanied by a detailed delivery schedule. In the event that the Buyer fails to complete the call-off order in accordance with the delivery schedule submitted, the Seller shall be entitled to charge the Buyer 50% of the list price for the goods subject to the order but which have not actually been supplied.

3. Specification

3.1 All specifications, drawings and data contained in the Seller's catalogues or otherwise supplied by the Seller are approximate only unless otherwise stated in writing.

3.2 The Seller reserves the right without prior notice to effect modifications and design changes and to discontinue manufacture of any goods as part of a continuous programme of product development.

4. Selection

4.1 The Buyer shall be responsible for selection of the goods ordered and determining whether they are suitable and sufficient for purpose unless specific advice about this is given in writing by the Seller.

4.2 The Seller shall have no liability for the failure of the goods to perform in accordance with the specification when such failure shall be caused by their operation in conditions which shall be unsuitable unless the Buyer shall have stated in its order that such conditions would apply and the Seller shall have accepted such stipulation in writing.

4.3 Where the Seller manufactures any special item based on a design or drawing submitted by the Buyer, the Seller will request written approval by the Buyer of the production drawing prior to manufacture and the Buyer shall be responsible for ensuring the accuracy of the production drawing in all respects.

5. Prices

5.1 Prices quoted by the Seller are based upon its prices ruling at the date of quotation and the Seller reserves the right to adjust its prices at the time of acceptance of order to reflect any increase in the cost of supplying the goods or the publication of a new price list occurring after quotation.

5.2 Unless otherwise stated in writing prices quoted by the Seller are exclusive of the cost of packaging and delivery and VAT.

5.3 While the Seller makes every effort to ensure that prices stated on its website are up-to-date and accurate the Buyer shall not rely on prices stated there and should contact the Seller's sales office to verify prices before placing an order.

5.4 The Buyer shall not be entitled to make any deduction from the price by way of setoff or counter-claim.

6. Payment

6.1 Save where the Buyer has a credit account with the Seller, or is from outside the United Kingdom, the Buyer is requested to make payment by debit or credit card.

6.2 Where the Buyer makes payment for goods by means of a debit or credit card the Buyer must notify the Seller that it chooses to pay by this method at the time of placing an order. The Seller reserves the right to decline to accept payment by credit card in any particular instance. The payment will be deducted from the Buyer's card account upon despatch of the goods from the Seller's premises.

6.3 If the Buyer is a trade customer or a regular customer, the Seller will upon request open a credit account for the Buyer provided that the price of the Buyer's first order for goods exceeds £100. For credit account customers the Seller requires payment to be made within 30 days after the date of invoice.

6.4 If the Buyer is from outside the United Kingdom payment for the goods in full is required at the time the order is placed.

6.5 Any cheque payment should be made out to "Wixroyd International Limited". The Seller's bank details will be provided upon request to enable the Buyer to make any payment by means of bank transfer.

6.6 Payment made by means of a cheque, bill or documentary credit shall be deemed to be effected when honoured and all costs of

discounting and encashing shall be borne by the Buyer.

6.7 Time for payment shall be of the essence of the contract.

6.8 In the event of delay in payment the Seller shall be entitled to charge interest at 4% per annum above Barclays Bank plc base rate from time to time from the date of invoice until the date on which payment is actually made, without prejudice to its other rights.

6.9 During any period of default in payment and at any time when the Seller shall have reasonable grounds for doubting that any payment by the Buyer will be made on the due date, the Seller shall be entitled to suspend work and withhold deliveries, without prejudice to its right to payment for goods delivered and work done and expenses incurred in connection with undelivered goods which shall become immediately due and payable.

6.10 If such default or other circumstances shall continue for a period of 14 days, the Seller shall be entitled to terminate the contract by written notice to the Buyer, without prejudice to its other rights.

6.11 The granting by the Seller to the Buyer of time or other indulgence shall not prejudice or constitute a waiver of any of the Seller's rights under these conditions.

6.12 The Seller shall have a general lien over any goods of the Buyer in its possession for all money due to it from the Buyer. If any lien is not satisfied within 14 days of such money becoming due, the Seller may sell the goods as agent for the Buyer and apply the proceeds, after deducting the expenses of the sale, towards the monies due and the balance (if any) shall be paid to the Buyer.

7. Delivery Times

7.1 The Buyer should contact the Seller's sales office for current delivery times.

7.2 Any time for delivery given by the Seller shall not be of the essence of the contract.

7.3 The Seller shall endeavour to meet the Buyer's delivery requirements but shall not be liable for any loss or damage caused by delay in delivery and the Buyer shall not be entitled to cancel the contract because of such delay.

7.4 Each delivery shall be considered a separate transaction and the failure of any one delivery shall not affect the due performance of the contract as regards other deliveries.

7.5 The Seller shall be entitled to make partial deliveries and these conditions shall apply to each delivery.

8. Delivery

8.1 Unless otherwise agreed, delivery shall be effected at the premises of the Buyer or other place specified in the contract for delivery and the method of carriage and choice of carrier for delivery within the United Kingdom shall be determined by the Seller.

8.2 The Buyer shall be responsible for paying the Seller's carriage costs unless it shall make its own arrangements with the agreement of the Seller prior to the Seller arranging carriage. If the goods shall be collected by the Buyer or by a carrier pursuant to arrangement made by the

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Buyer, delivery shall be deemed to take place on collection.

8.3 If the Buyer requires delivery to be made outside the United Kingdom, the Seller recommends that the choice of carrier shall be determined by the Buyer and that the Buyer notifies such choice to the Seller at the time of placing its order. In the absence of such notification the Seller will choose the carrier.

8.4 If delivery should be delayed at the request of the Buyer, the Seller may place the goods in store at the Buyer's risk and the Buyer shall pay such storage costs and other costs incurred by the Seller as a result of such delay.

9. Title and Risk

9.1 Title to the goods shall remain in the Seller until payment in full is made by the Buyer.

9.2 The provisions of paragraph 9.1 shall not prevent the Buyer from fixing the goods to any other product or selling the goods in the normal course of business but in the event of sale to the extent of the Buyer's indebtedness to the Seller in respect to the goods, the Buyer shall hold the proceeds of sale or the right to receive the same on trust for the Seller and shall, at its request, either (i) place the proceeds of sale in a separate account of the Buyer in such a way as to be identifiable as in the beneficial ownership of the Seller, or (ii) assign the right to receive the proceeds of sale to the Seller.

9.3 If the Buyer shall default in payment for any goods and at any time when the Seller shall have reasonable grounds for doubting that payment for the goods will be made on due date, the Seller, without prejudice to its other rights, may enter upon any land or premises where the goods may be to detach them and to recover possession of them.

9.4 The risk in the goods shall pass to the Buyer on delivery of placing in store in accordance with paragraph 8.

10. Inspection, Transit Delays and Non Delivery

10.1 The Buyer must inspect the goods as soon as is reasonably practicable after delivery and shall within 7 days of delivery give notice to the Seller in detail of any defect in the goods or of any other complaint which the Buyer may have in relation to the goods. If the Buyer fails to give such notice the goods shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect which would be apparent on reasonable examination, and the Buyer shall be deemed to have accepted the goods accordingly.

10.2 In the event that the Buyer establishes to the Seller's reasonable satisfaction that the goods are not in accordance with the contract or are so defective, the Buyer's sole remedy in respect of such non-accordance or defects shall be limited as the Seller may elect to the replacement of the goods or refund of the purchase price or, where sums are owed by the Buyer to the Seller, the issue of a credit note or a credit card account refund against return of the goods.

10.3 Queries regarding shortages of goods must be made within 7 days of the despatch date and must be accompanied by the despatch note. Queries regarding goods invoiced but not delivered must be made

within 10 days of invoice date and the invoice number must be quoted. In no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non delivery of late delivery of the goods or any of them for whatever reason or for any loss consequential or otherwise arising from non delivery or late delivery.

11. Returns

11.1 The Seller shall be under no obligation to accept the return of any goods unless they are faulty or are found to be damaged upon delivery.

11.2 In exceptional cases the Seller may at its discretion accept the return of goods in which case the Buyer will be credited with the price of the goods set out in the invoice less a handling charge of 20% of that price. A return will only be accepted if the Seller's sales office has first agreed to the return and issued a goods return number, if the return is made within 30 days of the date of the invoice, and if the goods are returned with their packaging intact and unmarked.

12. Liability

12.1 Save as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are hereby excluded.

12.2 Where any valid warranty claim in respect of any of the goods which is based on any defect in the quality of condition of the goods is notified to the Seller, then the Seller shall be entitled to repair or replace the goods free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

12.3 The Seller shall have no limit on its liability for death or personal injury caused by the Seller's negligence or the negligence of its employees.

12.4 Subject to condition 12.3, the Seller shall have no liability to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:

- (a) for any increased costs or expenses.
- (b) for any loss of profit, business, contracts, revenues or anticipated savings, or
- (c) for any special, indirect or consequential loss or damage of any nature whatsoever.

12.5 Subject to condition 12.3 and notwithstanding anything contained in these conditions, the Seller's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the supply of the goods shall be limited to a sum equivalent to the price of the goods supplied.

13. Indemnity

Subject to any statutory provision to the contrary, the Seller shall have no liability for any loss of damage suffered by any third party caused directly or indirectly by the goods, whether as the result of their operation or use or otherwise and whether as the result of any defect there in or otherwise and the Buyer shall indemnify the Seller from any claim arising from any such loss or damage.

14. Force Majeure

The Seller shall not be liable for any loss or damage sustained by the Buyer caused by

delay or failure to perform the contract arising from any act of God, war, riot, strike, lock-out, government control or regulation, abnormal weather conditions, accident, breakdown or any other circumstances beyond the Seller's control and in such event, insofar as the contract shall not have been performed, the Seller may either terminate the contract and return any advance payment received or delay for such period as may be necessary.

15. Confidentiality

15.1 All drawings and other documents supplied by one party to the other shall remain the copyright and property of the party supplying the same and may not be copied or reproduced without its consent and such documents shall be returned in the event of the contract not being made or completed.

15.2 Any trade secret or confidential information supplied by either party to the other shall be kept confidential and shall not be disclosed to any party without the consent of the party supplying the same.

16. Infringement

16.1 The Buyer shall notify the Seller immediately of and circumstances coming to its attention which may be likely to give rise to any claim that the goods infringe the rights of any third party and shall permit the Seller to conduct any action or negotiations in respect thereof in the name of the Buyer but at the Seller's expense.

16.2 In the event of any such claim being successful, the Seller shall indemnify the Buyer against any liability it may sustain to such third party, but shall have no other liability to the Buyer in respect thereof.

17. Notices

Any notice to be given by either party to the other shall be properly given if sent by telex, e-mail or post to the party to be served at its head office or last known address and shall be deemed to have been served, in the case of postal delivery, when the normal course of post it would have been delivered.

18. Sale to Consumers

If the Buyer is a consumer purchasing goods under a distance contract, as those terms are defined in the Consumer Protection (Distance Selling) Regulations 2000 ("the Distance Selling Regulations") these conditions shall be subject to the provisions of the Distance Selling Regulations and in the event of there being any conflict between these conditions and the Distance Selling Regulations, the Distance Selling Regulations shall prevail.

19. Law

The contract shall be governed by English law and the English courts shall have jurisdiction to determine any dispute between the parties in relation thereto.

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