

WATERLOO AIR PRODUCTS PLC

TERMS AND CONDITIONS OF SALE

The Customer's attention is in particular drawn to the provisions of condition 10.4

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions:

"Contract"	any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions;
"Customer"	the person, firm or company who purchases the Goods from Waterloo;
"Delivery Point"	the place where delivery of the Goods is to take place under condition 4;
"Goods"	any goods agreed in the Contract to be supplied to the Customer by Waterloo (including any part or parts of them); and
"Waterloo"	Waterloo Air Products PLC (4911865) of registered office Mills Road, Aylesford, Kent, ME20 7NB.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender. Condition headings do not affect the interpretation of these conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all Waterloo's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of Waterloo. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Waterloo which is not set out in the Contract. Nothing in this condition shall exclude or limit Waterloo's liability for fraudulent misrepresentation.

- 2.4 Each order or acceptance of a quotation for Goods by the Customer from Waterloo shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by Waterloo until a written acknowledgement of order is issued by Waterloo or (if earlier) Waterloo delivers the Goods to the Customer.
- 2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until Waterloo despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 90 days only from its date, provided that Waterloo has not previously withdrawn it.

3 DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in Waterloo's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Waterloo and any descriptions or illustrations contained in Waterloo's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4 DELIVERY

- 4.1 Unless otherwise agreed in writing by Waterloo, delivery of the Goods shall take place at Waterloo's place of business.
- 4.2 The Customer shall take delivery of the Goods within 3 days of Waterloo giving it notice that the Goods are ready for delivery unless otherwise agreed. Goods will not be accepted for return and credit in whole or in part due to incorrect customer information, order or over order.
- 4.3 Any dates specified by Waterloo for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions Waterloo shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Waterloo's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Waterloo is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- 4.5.1 Risk in the Goods shall pass to the Customer (including for loss or damage caused by Waterloo's negligence);
- 4.5.2 the Goods shall be deemed to have been delivered; and
- 4.5.3 Waterloo may store the Goods until delivery, whereupon the Customer shall accept the invoice date to be at the original delivery date, be liable for all related costs and expenses (including, without limitation, storage and insurance). Stored goods will be marked with customer name and sales acknowledgement number.
- 4.7 Waterloo may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by Waterloo upon despatch from Waterloo's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 Waterloo shall not be liable for any non-delivery of Goods (even if caused by Waterloo's negligence) unless the Customer gives written notice to Waterloo of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of Waterloo for non-delivery of the Goods 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 such Goods.

6 RISK/TITLE

- 6.1 The Goods are at the risk of the Customer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Customer until Waterloo has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 6.2.1 the Goods; and
 - 6.2.2 all other sums which are or which become due to Waterloo from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as Waterloo's bailee;
 - 6.3.2 store the Goods (at no cost to Waterloo) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Waterloo's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on Waterloo's behalf for their full price against all risks to the reasonable satisfaction of Waterloo. On request the Customer shall produce the policy of insurance to Waterloo.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 6.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - 6.4.2 any such sale shall be a sale of Waterloo's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 6.5 The Customer's right to possession of the Goods shall terminate immediately if:
 - 6.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - 6.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Waterloo and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - 6.5.3 the Customer encumbers or in any way charges any of the Goods.
- 6.6 Waterloo shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Waterloo.
- 6.7 The Customer grants Waterloo, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.8 Where Waterloo is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Waterloo to the Customer in the order in which they were invoiced to the Customer.
- 6.9 On termination of the Contract, howsoever caused, Waterloo's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7 PRICE

- 7.1 Unless otherwise specified by Waterloo in writing, the price for the Goods shall be the price at time of order. With any preceding quotations to be deemed expired after 90 days from issue.
- 7.2 The price for the Goods shall be exclusive of any value added tax of which the Customer shall pay in addition when it is due to pay for the Goods.

8 PAYMENT

- 8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered or as per agreed account terms.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until Waterloo has received cleared funds.
- 8.4 All payments payable to Waterloo under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Waterloo to the Customer.
- 8.6 If the Customer fails to pay Waterloo any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Waterloo on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

9 QUALITY

- 9.1 Where Waterloo is not the manufacturer of the Goods, Waterloo shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Waterloo.
- 9.2 Waterloo warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 24 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.3 Waterloo shall not be liable for a breach of the warranty in condition 9.2 unless:
- 9.3.1 the Customer gives written notice of the defect to Waterloo, and, if the defect is as a result of damage in transit to the carrier, within 3 days of the time when the Customer discovers or ought to have discovered the defect; and
- 9.3.2 Waterloo is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by Waterloo) returns such Goods to Waterloo's place of business at the Customer's cost for the examination to take place there.

- 9.4 Waterloo shall not be liable for a breach of the warranty in condition 9.2 if:
- 9.4.1 the Customer makes any further use of such Goods after giving such notice; or
 - 9.4.2 the defect arises because the Customer failed to follow Waterloo's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 9.4.3 the Customer alters or repairs such Goods without the written consent of Waterloo.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranty in condition 9.2 Waterloo shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Waterloo so requests, the Customer shall, at the Customer's expense, return the Goods or the part of such Goods which is defective to Waterloo.
- 9.6 If Waterloo complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.
- 9.7 Any Goods replaced shall belong to Waterloo and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 24 warranty month period.

10 LIMITATION OF LIABILITY

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of Waterloo (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 10.1.1 any breach of these conditions;
 - 10.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of Waterloo for death or personal injury caused by Waterloo's negligence or for any matter which it would be illegal for Waterloo to exclude or attempt to exclude its liability or for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 Waterloo's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - 10.4.2 Waterloo shall not be liable to the Customer 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.

11 ASSIGNMENT

- 11.1 Waterloo may assign the Contract or any part of it to any person, firm or Waterloo. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Waterloo.

12 FORCE MAJEURE

- 12.1 Waterloo reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Waterloo including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, 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, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to Waterloo to terminate the Contract.

13 GENERAL

- 13.1 Each right or remedy of Waterloo under the Contract is without prejudice to any other right or remedy of Waterloo whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by Waterloo in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by Waterloo of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.