

## **James Gordon Ltd – Terms and Conditions of Sale**

### **1. INTERPRETATION**

- 1.1. 'Buyer': the person, firm or company who purchases the Goods from the Company.
- 1.2. 'Company': James Gordon Ltd [SC:293893 ].
- 1.3. 'Contract': the agreement between the Buyer and the Company for the supply of Goods.
- 1.4. 'Goods': the machinery, parts and services (if any) set out in the Order.
- 1.5. 'Incoterms®': the International Chamber of Commerce Incoterms® rules applicable at the date of the Contract.
- 1.6. 'Order': the order placed by the Buyer with the Company for the supply of Goods.
- 1.7. 'Terms': these Terms and Conditions of Sale

### **2. CONTRACT**

- 2.1. The Order constitutes an offer by the Buyer to purchase Goods in accordance with the Terms.
- 2.2. The Order shall be accepted when the Company accepts the Order whereupon the Contract shall commence.
- 2.3. The Terms apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

### **3. PRICE and PAYMENT**

- 3.1. The price for the Goods shall be as set out in the Contract. The Company reserves the right to increase the price of the Goods by giving notice to the Buyer at any time before delivery.
- 3.2. The Company shall be entitled to payment of the price of the Goods before delivery. All Wholegoods shall be paid for by the date set out in the invoice or if none within 7 days of delivery of the Goods. All Service and Parts shall be paid for at the end of the month following the invoice date.
- 3.3. All prices exclude VAT or any other tax or levy on the supply or importation of the Goods, packaging, loading shipping and insurance unless otherwise indicated in writing.
- 3.4. Payment shall be made by cheque, credit card (Payments over £2000 will require further discussion with the Company) or BACS. The Company can accept cash to a limit of £5,000.00.
- 3.5. In the event that payment is not received for the Goods by the Company by the date set out on the Company's invoice for the Goods the Company reserves the right to charge interest at 2% above the then current Bank of England base rate.

### **4. TITLE and RISK**

- 4.1. In the case of U.K. sales:
  - a. The risk in the Goods shall pass to the Buyer when the Goods are handed to the carrier for delivery to the Buyer. In the event that the carrier is the Company the risk in the Goods shall pass to the Buyer on completion of delivery.
  - b. Any return of the Goods or part thereof shall be at the risk of the Buyer until the Company has acknowledged receipt of delivery of such Goods.
- 4.2. In the case of international sales Incoterms® shall apply.
- 4.3. Title shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) for the goods and any other goods that the Company has supplied to the Buyer.
- 4.4. Until title to the Goods has passed to the Buyer, the Buyer shall:
  - a. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date that risk in the Goods passes;
  - b. keep the Goods serviced at all relevant service intervals applicable to the Goods;
  - c. give to the Company such information relating to the Goods as the Company may require from time to time;
  - d. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property.

### **5. Termination**

- 5.1. Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer:
  - a. fails to pay any amount due under the Contract on the due date for payment;
  - b. commits a material breach of its obligations under the Contract;
  - c. takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors or is the subject of any insolvency process;
  - d. suspends or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business.
- 5.2. On termination of the Contract the Buyer shall:
  - a. immediately pay to the Company all of the Company's outstanding unpaid invoices and interest;
  - b. pay to the Company the value of any Goods supplied in respect of which no invoice has been delivered;
  - c. return all Goods which have not been fully paid for. If the Buyer fails to do so then the Company, its servant or agents may enter the Buyer's premises and take possession of them.
- 5.3. Termination shall not affect any rights remedies obligations and liabilities of the parties that have accrued up to the date of termination.

### **6. Force Majeure**

The Company shall not be liable to the Buyer for any loss or damage including consequential loss as a result of manufacture or delivery of all or some of the Goods being delayed or prevented by circumstances outside the reasonable control of the Company including but without prejudice to the generality of the above delays by the Company's suppliers, labour shortages, strikes, lockouts or labour disputes of any kind, fires, floods, accidents or breakdowns of machinery or equipment, shipping, dock strikes, railway or transport, accident, war, riot, civil commotion, Government intervention, declaration of national emergency, act of God, inability to obtain raw materials, cancellation or shortage of supplies, breach of contract by their own manufacturers or suppliers, difficulty or impossibility of complying with import regulations or obtaining import licences. In any such circumstances the Company shall be entitled at any time without prejudice to its other rights to cancel the contract or as its option to effect partial delivery or performance without incurring any liability whatsoever to the Buyer. In circumstances where the Goods have been specially obtained for the Buyer and there is no readily available market for them, the Company shall be entitled to charge the Buyer reasonable costs and expenses incurred in respect of the Goods.

### **7. Specifications**

- 7.1. The specifications of the Goods shall be those stated in the manufacturer's current catalogue, with customisations to the specification as detailed in the quote or sales advice copied to the Buyer.
- 7.2. Whilst specifications are considered to be correct at the date of printing the Company reserves the right to change specifications of the Goods and their packing and presentation without prior notification.
- 7.3. Original equipment part numbers are quoted for reference purpose only and are not intended to infer that equivalent replacements are used as original equipment.

### **8. Warranties**

- 8.1. The Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 8.2. The Company shall be under no liability under the above warranty: 8.3. If the Company fails to comply with such obligations its liability for such failure shall be limited to the Contract price of the Goods.
- 8.4. The Terms are in lieu of all warranties, conditions, terms, undertakings, and obligations implied by statute, common law, custom, trade usage, course or dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to orders for Goods.

### **9. Part Exchange of Machinery**

- 9.1. Where the supplier agrees to allow part of the price of the Goods to be paid by the Customer delivering used machinery or equipment to the Supplier, that allowance is accepted by the Supplier on the following conditions:-
  - (a) The used machinery or equipment shall be delivered to the supplier in the same condition as when examined by the Supplier fair wear and tear allowed, and,
  - (b) The used machinery or the equipment is the Customers property absolutely and it is not the subject of any hire purchase or credit sale agreement or other legal encumbrance whatsoever, or,
  - (c) Where the used machinery or equipment is the subject of a hire purchase or credit sale agreement capable of cash settlement by the Suppliers then such allowance shall be reduced by the amount required by the Finance Company in settlement thereof and so paid by the supplier.

### **10. Liability**

Except in respect of injury to or death of any person caused by the Company's negligence, or in respect of the Company's liability under the Consumer Protection Act 1987 for any injury to or death of any person or loss of or damage to property intended for private use caused by a defect in the Goods the Company shall not be liable to the Buyer for any loss or damage which arises out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Terms.

### **11. Data protection**

The Company will only use personal details in line with its privacy policy notice. The Company is aware of its obligations under the General Data Protection Regulation (GDPR) and UK data protection legislation and is committed to processing your personal data securely and transparently, in manual and electronic form.

### **12. Complaints**

Complaints must be submitted to the Company in the following way: In writing to: The Managing Director, James Gordon Ltd, Dalbeattie road, Castle Douglas, DG7 1HZ. The Company will try to resolve written complaints straight away. However, if it requires a more in-depth investigation, then the Company will aim to give the complainant a final response within four weeks. If for whatever reason this is not possible, the Company will aim to contact the complainant to explain the reasons why and let the complainant know how long the investigations are likely to take.

### **13. Jurisdiction**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.