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## **CONDITIONS OF SALE – JUNE 2013**

### **NOTATION**

It is understood that reference to the "Seller" means Whites Material Handling Limited and "Purchaser" means any person, firm or company with whom the Seller enters into a contract whether directly or indirectly. "**Services**" means all services to be performed under any contract between the Seller and Purchaser. "**Goods**" means any product manufactured or supplied by the Seller.

### **APPLICATION**

These Conditions of Sale shall override any terms and conditions stipulated, incorporated or referred to by the Purchaser in the acceptance (whether described as an order or otherwise) or in any prior negotiations and if a Purchaser's order contains or is subject to terms and conditions at variance with these Conditions of Sale, these Conditions of Sale shall prevail.

### **PAYMENT**

**NETT MONTHLY ACCOUNT.** Payment is due by the end of the month following the month of delivery, and as regards payment thereof time shall be of the essence. If payment is not made within this period unless special conditions were previously agreed, no further Goods will be despatched nor Services performed until the account has been settled. If payment is not made within a further 30 days then any subsequent contract for Goods and/or Services between the Seller and Purchaser will be made on the basis that payment must be made in full in sterling before the Goods will be despatched and/or Services performed.

All prices are exclusive of VAT, duties, levies, carriage and insurance which shall be for the account of the Purchaser.

All payments shall be made in sterling and shall be paid in full without any deduction set off or counterclaim.

The Seller shall also be entitled to recover all of its reasonable legal costs incurred as a result of the Purchaser's failure to pay the price when due.

### **EXPORT**

This condition applies where Goods are supplied for export from the United Kingdom.

Unless expressly stated in the Seller's acknowledgement of the Purchaser's order, prices are Ex-Works Incoterms 1990 and do not include carriage, freight, insurance, loading and the preparation

of all export documentation which will be supplied at the option of the Seller on written request by the Purchaser and any extra charges for such services shall be for the account of the Purchaser.

The Purchaser is responsible for complying with all laws and regulations governing the import of the Goods into any country and for ensuring that the Goods comply with all laws, regulations and licensing requirements of any country to which they are exported. The Purchaser shall indemnify the Seller against the consequences of any breach of those laws, regulations and licensing requirements.

Section 32(3) of the Sale of Goods Act 1979 shall not apply where Goods are handed to a carrier or United Kingdom port for export to the Purchaser. That carrier or port shall be treated as an agent for the Seller for the purposes of Section 44, 45 and 46 of the Sale of Goods Act 1979.

The uniform law on international sales shall not apply.

### **WARRANTY – All Products**

If within twelve months from the date when the Goods are first used or eighteen months from the date of delivery of the Goods to the Purchaser, whichever is the earlier, any defect appears in the Goods which is due to faulty material or poor workmanship, the Seller will remedy such defects at its option either by replacement or repair of the Goods free of charge PROVIDED THAT full details of such defect, including photographic evidence where appropriate, are notified and confirmed in writing to the Seller within 7 days of the defect first appearing.

#### WARRANTY – All products

The Purchaser shall either return the defective Goods to the Seller (which shall be at the Seller's expense if the Goods are found to be defective and at the Purchaser's expense otherwise) or shall make available the Goods for inspection by the Seller before repair or replacement can be effected.

On proper notification of the defect the Seller may at its sole option sign an authorisation to proceed permitting the Purchaser to arrange for the repair or replacement of the Goods. The Seller will be liable for the Purchaser's costs of repair and replacement insofar as such costs shall have been agreed by the Seller prior to the commencement of the work. The seller is not liable for any travelling and/or overnight costs which might occur during the repair of the goods

Once authorisation to proceed has been granted and the amount of the Purchaser's costs agreed, the Seller will issue a credit note to the Purchaser against the original sales invoice to cover the agreed cost of repair or replacement. The Seller will not meet any costs of repair or replacement not previously agreed by it.

BUT, this warranty shall not apply to the following:-

- (i) all Ground Engaging Parts including but without limitation teeth, cutting edges, sidecutters and tines;
- (ii) defects resulting from fair wear and tear, misuse or failure to carry out the maintenance procedure recommended by the Seller or such maintenance procedures as are reasonable;
- (iii) defects in Goods resulting from the repair or maintenance carried out by someone not previously approved by the Seller or repair or maintenance work not authorised by the Seller; or
- (iv) Defects which are not notified to the Seller in accordance with the terms set out in these Conditions of Sale.
- (v) Defects resulting from failure of hydraulic and/or electrical systems (which are used to power the goods) that have been incorrectly installed by the Purchaser.

## **DEFECTS**

The Goods delivered or Services performed shall be conclusively presumed to be in all respects in accordance with the contract unless the Purchaser notifies the Seller otherwise within 3 working days of the date of delivery. Claims will only be entertained by the Seller if the Goods are still in the original state and have not been treated or processed.

If the Purchaser establishes to the Seller's reasonable satisfaction that there has been a breach of the warranty or the Goods and/or services are not in accordance with the contract, the Purchaser's sole remedy shall be limited (at the Seller's option) to the replacement of Goods or a refund of the purchase price in each case (other than for non receipt) against return of the Goods. Goods delivered in accordance with the contract may not be returned without the Seller's express agreement and on such terms as it thinks fit.

The Purchaser's own materials will be processed or treated in accordance with any contract but the Seller does not accept any liability for the costs of replacement of the materials in the event of a mistake occurring.

## **LIABILITY**

Nothing in these conditions affects the statutory rights of a Purchaser where the Goods or services are sold to a person dealing as a consumer (as defined in the Unfair Contract terms Act 1977). Nothing in these conditions shall exclude the liability of the Seller for death or personal injury resulting from its negligence insofar as the same is prohibited by a United Kingdom statute.

Save as expressly provided in these conditions, all terms, conditions, representations and warranties (whether expressed or implied) are excluded to the fullest extent permitted by law.

Subject to any other limitation or exclusion of liability in these conditions, the maximum aggregate liability of the Seller, its employees and agents for breach of any contract or otherwise in connection with that contract (including for breach of any statutory duty and any tortious act or omission including negligence) shall so far as permitted by law be limited to the price paid to the Seller under the contract.

The Seller shall not be liable for any loss of profits or goodwill nor any special, indirect, economic or consequential loss.

The Seller shall not be liable for any delay or failure in the performance of its obligations under any contract to the extent due to circumstances beyond its control. Time for delivery of Goods and or Services is not of the essence of the contract.

## **RETENTION OF TITLE - "PROPERTY IN GOODS"**

(a) Risk in the Goods shall pass to the Purchaser immediately on delivery to the Purchaser. Delivery shall take place when the Goods leave the Seller's premises.

(b) The property in the Goods shall not pass to the Purchaser until all sums due or owing to the Seller by the Purchaser on any account have been paid. While the Goods are the property of the Seller, the Purchaser shall keep them safe, insured and separate and identifiable from all the goods in its possession and the Seller may (in addition to any other rights he may have) enter any land or buildings where the Goods are located and repossess and sell the goods.

## **ORDERS**

All orders, which will be subject to these conditions, shall not be binding on the Seller until accepted by the Seller.

## **CHOICE OF LAW AND JURISDICTION**

Any contract between the Seller and the Purchaser shall be governed and construed in accordance with English law. The Seller and the Purchaser each submit to the exclusive jurisdiction of the English courts.