

F.G. WILSON ENGINEERING (DUBLIN) CONDITIONS OF SALE

1. **DEFINITIONS** "Seller" means F. G. Wilson Engineering (Dublin) Limited. "Buyer" means the person firm or company who buys or agrees to buy the goods from the Seller. "Conditions" means the terms and conditions of sale set out in this document and any other special terms and conditions agreed in writing by the Seller. "Delivery Date" means the date specified by the Seller when the goods will be delivered. "Goods" means the articles which the Buyer agrees to buy from the Seller. "Price" means the price for the goods excluding carriage, packing, insurance and VAT.
2. **CONDITIONS APPLICABLE**
 - (a) These conditions shall apply to all Contracts for the sale of goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the buyer may purport to apply under any Purchase Order, Confirmation Order or similar document.
 - (b) All orders for goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
 - (c) Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer to acceptance of conditions.
 - (d) Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
3. **THE PRICE AND PAYMENT**
 - (a) Unless expressly stated otherwise, prices shall be ex-works and exclude delivery costs. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice. The price of the goods shall be Sellers quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by Buyer, after which time they may be altered by Seller without giving notice to Buyer.
 - (b) The Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of the goods to effect an increase in the cost to Seller which is due to any factor beyond the control of Seller, (such as, without limitation, any foreign exchange fluctuation, or currency regulation, alteration of duties, significant increase in cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by Buyer, or any delay caused by an instruction of Buyer or failure of Buyer to give Seller adequate information or instructions.
 - (c) Payment of the price and VAT shall be prior to despatch of goods. Time for payment shall be of the essence.
 - (d) Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 5% above Bank of Ireland base rate from time to time in force and shall accrue at such a rate after as well as before any Judgment.
4. **THE GOODS**
 - (a) The Goods shall be manufactured and supplied in accordance with the description contained in the Seller's specification and manufactured in accordance with all applicable Irish standards which relates specifically to the Goods.
 - (b) The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements and which do not materially affect the quality or fitness for purpose of the Goods.
5. **WARRANTIES AND LIABILITY** The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller.
6. **DELIVERY OF THE GOODS**
 - (a) Delivery of the Goods shall be made to the Buyer's address on the delivery date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery or in the alternative -
 - (b) Due delivery of the Goods shall be deemed to have been made when the Seller supplies to the Buyer the dock warrant or the shipped bill of lading for the goods.
7. **ACCEPTANCE OF THE GOODS**
 - (a) The Buyer shall be deemed to have accepted the Goods 24 hours after delivery to the Buyer.
 - (b) After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.
8. **TITLE AND RISK**
 - (a) The Goods shall be at the Buyers risk as from delivery.
 - (b) In spite of delivery having been made properly the Goods shall not pass from the Seller until -
 - (i) The Buyer shall have paid the price plus VAT in full and,
 - (ii) No other sum whatever shall be due by the Buyer to the Seller.
 - (c) Until property in the goods passes to the Buyer in accordance with clause (b) the Buyer shall hold the goods and each of them on a *bijucyriary* basis as *baillce* for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in his possession and marked in such a way that they are clearly identified as the Seller's property.
 - (d) Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at good market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal in making such sale or dealings. Until property in the goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn Bank account and shall be at all material times identified as the Seller's money.
 - (e) The Seller shall be entitled to recover the price plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.
 - (f) Until such times as property in the goods passes from the Seller the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause (d) shall cease.
 - (g) The Buyer shall not pledge or in any way charge or by way of security for any indebtedness any of the goods which are the property of the Seller. Without prejudice to the rights of the Seller, if the Buyer does so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
 - (h) The Buyer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Seller to the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce copy of the Policy of Insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
9. **REMEDIES OF BUYER**
 - (a) The Buyer shall inspect the Goods on deliverage and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity of inspecting the goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the goods and the Buyer shall be deemed to have accepted the Goods.
 - (b) The Buyer shall notify the Seller of any non-delivery of a whole consignment within seven days of the date of despatch (as stated on the Invoice). Notwithstanding the receipt by the Seller of any such notice a clear signature on the carriage delivery advice sheet shall be deemed to signify receipt of the quantity of Goods indicated on the advice sheet.
 - (c) If the Goods are not in accordance with the Contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or if the Seller shall elect by refunding a proportionate part of the price.
 - (d) The Seller's liability to the Buyer, whether for any breach of Contract or otherwise, shall not in any event exceed the price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liable to third parties incurred by the Buyer.
 - (e) All warranties and conditions whether implied by Statute or otherwise are excluded from this Contract provided that nothing in this Contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of the Buyer dealing as a consumer.
 - (f) All Goods sold in retail packaging may be re-sold by the Buyer only in the packaging supplied by the Seller and in no case may any trade mark other than those applied by the Seller be marked on or applied in relation to the Goods.
 - (g) No right or licence granted under this Contract of sale to the Buyer under any patent, trade mark, copyright or registered design or other direction of property right accept the right to use or re-sell the goods.
10. **INSOLVENCY OR OTHER DEFAULT OF BUYER** If the Buyer fails to make payment for the goods in accordance with this Contract of sale or commits any other breach of this Contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with his Creditors or commits an act of Bankruptcy or if any Petition in Bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or it being a Limited Company in any Resolution or Petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a Receiver or Administrator or Administrator Receiver or Manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under Foreign Law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may without prejudice to any other rights which it may have -
 - (i) Suspend all future deliveries of Goods to the Buyer, and/or terminate the Contract without liability on its part and/or
 - (ii) Exercise any of its rights pursuant to clause 8.
11. **SET-OFFS AND COUNTERCLAIMS** The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatsoever.
12. **BACK ORDERS** The Seller shall be entitled to a general lien on all Goods of the Buyer in the Seller's possession (including Goods of the Buyer which have been paid for) for the unpaid price of all Goods sold to the Buyer by the Seller under this or any other Contract.
13. **WAIVER** No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its right to do so in the future.
14. **SUB-CONTRACTING** The Seller may licence or sub-contract all or any part of its rights and obligations under this Contract without the Buyer's consent.
15. **FORCE-MAJEURE** The Seller shall not be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, act, drought, tempest or other event beyond its reasonable control.
16. **SELLER'S CANCELLATION** The Seller shall or may cancel its Contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
17. **CHOICE OF LAW AND ARBITRATION**
 - (a) This Contract is subject to Irish Law.
 - (b) If any dispute or difference shall arise between the parties as to the meaning of this Contract or any matter or thing arising out of or connected with the Contract then it shall be referred to the determination of an Arbitrator to be appointed by agreement of the parties or (in default of agreement within 21 days of the service upon one party of a written request to concur in such appointment) by the President for the time being of the Chartered Institute of Arbitrators.