

## Beacon Trade & Tool Hire Ltd – Conditions of Sale

### 1. GENERAL

(a) In these conditions:-

"the company shall mean Beacon Trade & Tool Hire Ltd;

"the Buyer" shall mean any person, firm or company placing an order with the Company;

"the U.K." shall mean the mainland of Scotland, England and Wales;

"the Goods" shall mean the goods and/or services (including any instalment of the goods or part of them) which the Company is to supply in accordance with these conditions;

"the Contract" shall mean the contract for the purchase and the sale of the Goods on these Conditions.

- (b) Quotations do not constitute an offer. Orders placed with the Company shall not be binding on the Company or deemed accepted by it unless a written acknowledgement of acceptance of order is issued to the Buyer by the Company.
- (c) The Company shall sell and the Buyer shall purchase the Goods in accordance with the Contract, subject to these Conditions (except those implied in favour of a seller which are not inconsistent with these Conditions), which supersede any other terms appearing in the Company's literature or elsewhere, and which shall govern the Contract to the exclusion of any terms and conditions referred to or stipulated by the Buyer.
- (d) No variation to those Conditions shall be binding unless agreed in writing by an authorised representative of the Company.
- (e) The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a company Director or a member of the executive management team in writing, and the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- (f) Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by a Company Director or a member of the executive management team is followed or acted upon entirely at the Buyer's own risk.
- (g) Any descriptions and illustrations contained in the Company's literature, price lists and advertisements or otherwise communicated to the Buyer are intended merely to present a general idea of the Goods described and nothing contained in any of them shall form any part of the Contract.
- (h) While every effort will be made to supply Goods in accordance with the quality of samples submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied.

### 2. PRICE

The price payable by the Buyer shall be as follows:-

- (a) Where the words "fixed price" appear in the Contract the price shall be the price appearing therein.
- (b) In any other case the price shall be deemed to be the Company's price prevailing at the date of despatch.

## Beacon Trade & Tool Hire Ltd – Conditions of Sale

- (c) Unless stated otherwise in writing the price shall be deemed to be exclusive of VAT at the rate prevailing at the date of despatch.
- (d) The Company reserves the right to impose a minimum charge of £5 on any particular order.
- (e) The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company.
- (f) The Company reserves the right to amend its price lists, quotations, invoices, credit notes and other documentation to correct errors.

### 3. TERMS OF PAYMENT

- (a) The Company reserves the right at its sole discretion to demand at any time full or partial payment before producing or proceeding further with an order.
- (b) Payment will be made in Pounds Sterling in England. The Buyer will establish and maintain in favour of the Seller an irrevocable and confirmed letter of credit with a UK clearing bank payable on drafts drawn at sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date and shall cover the full price of the Goods (including applicable taxes) and such letter of credit shall be divisible. All bank charges and other expenses in relation to the letter of credit shall be for the Buyer's account.
- (c) Outside the UK payment of all accounts is to be received upon presentation of the Company's despatch documents, invoices and proof of transit arrangements.
- (d) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the whole of the price of all goods bought or agreed to be bought by the Buyer shall fall due and payable without demand, and the Company shall be entitled to do any or all of the following:-
  - (i) cancel the Contract or suspend any further deliveries to the Buyer;
  - (ii) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the buyer and the Company) as the Company may think fit notwithstanding any purported appropriation by the Buyer).
  - (iii) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum above The Royal Bank of Scotland plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
  - (iv) treat such failure as a repudiation of the whole Contract by the Buyer and to recover damages for such breach of contract.

### 4. DELIVERY

- (a) In the UK the company reserves the right to charge the Buyer, at its absolute discretion, for the delivery of Goods to the delivery point indicated in the Buyer's order.
- (b) No claim for damage or shortages will be considered unless the Seller is advised in writing within 7 days of delivery. Where the Goods are not delivered by the Seller any claim for damage or shortages shall also be notified to the carriers by the Buyer in the

## Beacon Trade & Tool Hire Ltd – Conditions of Sale

- manner and within the appropriate time limit prescribed by the carrier's terms & conditions.
- (c) No claim for non-delivery will be considered unless the Seller is advised within 14 days of the date of the Seller's invoice.
  - (d) In the event of failure by the Buyer to give the appropriate notice or notices as specified in Clause 4b & 4c above, the Buyer's claim will be deemed to have been waived and will be absolutely barred.
  - (e) Outside the UK, unless agreed in writing, all prices are F.O.B. to the departure point indicated in the Buyer's order.
  - (f) Where F.O.B. prices are agreed for the Contract, the Company cannot accept responsibility for the Goods once the Goods have been signed for as received by freight forwarders at the port of departure indicated in the Buyer's order.
  - (g) Whilst the Company makes every effort to deliver the Goods on the dates or within the period mentioned in the Contract such dates or period shall be deemed to be for information purposes only and shall not form part of the Contract unless specifically agreed in writing by the Company to be "of the essence of the Contract", and in the absence of such agreement the Company accepts no liability whatsoever for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Buyer as a result of any failure on the part of the Company to deliver Goods on or within the dates or periods mentioned in the Contract.
  - (h) The Company whilst making every effort to deliver exact quantities as mentioned within the Buyer's order shall be entitled to deliver goods within a tolerance of plus or minus 10% of the order quantity with the price being amended on a pro rata basis.
  - (i) The Company shall be entitled to deliver the Goods in one or more consignments unless otherwise expressly agreed. Where the Goods are to be delivered & invoiced in instalments, each delivery shall constitute a separate contract, and failure by the Company to deliver one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
  - (j) If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions then, without prejudice to any other right or remedy available to the Company, the Company may:-
    - (v) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage: or
    - (vi) sell the Goods at such price as the Buyer may consider reasonable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
  - (k) Should the Company be prevented from delivering part of the Goods by reason of any cause beyond the Company's reasonable control (including industrial action, and shortage of materials or labour) the Buyer shall take and pay for such part of the Goods as the Company shall be able to deliver in accordance with the Contract.

### 5. TITLE TO GOODS

- (a) The property, both legal and equitable, in the Goods shall not pass to the Buyer until:-
  - (i) purchase price of the Goods has been paid in full; and

Beacon Trade & Tool Hire Ltd – Conditions of Sale

- (ii) payment in full is made to the Company of any sum which is at the date of Contract or may thereafter become due or owing from the Buyer to the Company.
- (b) While the ownership of the Goods remains with the Company the Buyer shall hold them in a fiduciary capacity and shall store them upon its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company. Risk in the Goods passes to the Buyer as soon as the Goods leave the Company's premises.
- (c) If any payments due hereunder are overdue in whole or in part the Company may (without prejudice to its other rights) recover or resell the Goods or any part of them and may enter upon the Buyers premises (or such other premises where the Goods are stored) by its servants or agents for that purpose and/or may stop the Goods in transit.
- (d) The Buyer shall not be at liberty to sell on the Goods before effecting payment therefore to the Company unless such on-sale is at a price not less than the price agreed between the Company and the Buyer. Without prejudice and subject to the rights of the Company in law and equity, if any of the Goods shall be sold by the Buyer before payment for them has been made, that part of the proceeds of sale which represents or is equivalent to the amount owed by the Company shall be held by the Buyer upon trust for the Company and shall be paid into a separate bank account designated for that purpose. The Company shall be entitled to trace the proceeds of any such sale(s) into the said bank account (or wherever such proceeds may in fact be located) and the Buyer hereby authorises the Company to make enquiries of its bankers (or otherwise appropriate) relating to such proceeds.
- (e) The Buyer shall ensure that the Goods are not incorporated in or mixed with or used as part of other goods ("New Goods") before payment for the Goods has been made to the Company although if such incorporation or mixing shall take place the property in those Goods which remain identifiable and/or severable from such "new goods shall be and remain with the Company until payment has been made or the New Goods have been sold as aforesaid and all the Company's rights hereunder in the Goods shall extend to such part of the New Goods and to the proceeds of sale thereof which shall be held by the Buyer in accordance with the sub clause (d) hereof
- (f) The Buyer or any director(s) thereof shall not apply to the Court under section 9(1) of the Insolvency Act 1986 for the appointment of an administrator without giving 14 days notice to the Company. From the date of the said notice the Buyer shall not be entitled to remain in possession of any of the Company's Goods and the Company may recover or resell the Goods and enter upon the premises where the Goods are stored in accordance with sub-clause (c) above. The appointment of an administrator without the aforesaid notice shall be deemed to be a fundamental breach of Contract.
- (g) The Buyer hereby assigns to the Company all rights the Buyer has or may have against purchases of the Goods from the Buyer. Nothing in the Contract will constitute the Buyer, the agent of the Company in respect of any sale of the Goods by the Buyer so as to confer upon a third party rights against the Company.
- (h) Any failure by the Company to require a separate account under sub-clause (d) and or (e) above shall not constitute a waiver or variation of its rights under this clause.
- (i) Where the Company is unable to determine whether any goods are the Goods, the Company shall be deemed to have sold all goods of the kind sold by the Seller to the

Buyer, and the Buyer shall be deemed to have used such goods in the order in which they were invoiced to the Buyer.

- (j) The Company will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.
- (k) Each of the foregoing sub-clauses shall so far as the context permits be read and construed independently of the other sub-clauses so that if one or more should be held to be invalid for any reason then the remaining sub-clauses shall be valid to the extent that they are not held to be so invalid.

## 6. WARRANTIES AND LIABILITY

- (a) Subject to the conditions set out below the Company warrants that the Goods will be free from defects in material and workmanship for a period of six months from the date of their initial use or six months from delivery, whichever is the first to expire.
- (b) The above warranty is given by the Company subject to the following conditions:-
  - (i) the Company shall be under no liability in respect of any defect in the Goods arising from and drawing design or specification supplied by the Buyer;
  - (ii) the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.
  - (iii) if the Buyer is in breach of this or any other contract with the company;
  - (iv) the Buyer has notified the Company of any defect or suspected defect immediately the same comes to the knowledge of the Buyer;
  - (v) the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company in so far as the Company is able, using reasonable endeavours, to make the same available to the Buyer.
- (c) Where the Buyer claims to reject any Goods, the Buyer shall allow the Company a reasonable time and reasonable access to inspect them. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Company in accordance with these conditions, the Company shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer. The cost of dismantling and reassembling the Goods and/or returning them to the Company will be borne by the Buyer. Any Goods replaced will belong to the Company.
- (d) Save as provided in Clause 6(a) above the Company will be under no liability under the contract for any personal injury, death, loss or damage of any kind whatsoever (other than death or personal injury resulting from the Company's negligence) whether consequential or otherwise including but not limited to loss of profits and the Company hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Buyer except that such exclusion will not apply to:-

## Beacon Trade & Tool Hire Ltd – Conditions of Sale

- (vi) any implied condition that the company has or will have the right to sell the goods when the property is to pass; or
  - (vii) when the Buyer deals as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.
- (e) In no circumstances will the Company or its employees, agents or sub-contractors be liable for any loss or damage of any kind whatsoever (other than death or personal injury resulting from the Company's negligence) whether consequential or otherwise caused directly or indirectly by any negligence or other tortious act or breach of statutory duty on the part of the company on the part of any of its employees, agents or sub-contractors in connection with or arising out of the manufacturer or supply of the Goods or in connection with any statement given or made (or advice not given or made) by or on behalf of the Company.
- (f) The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control, Act of God, explosion, flood, tempest, fire or accident: war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority: import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, part or machinery: power failure or breakdown in machinery.

### 7. ORDERS AND SPECIFICATIONS

- (a) In cases where the Buyer provides drawings, designs, models or specification for the purposes of enabling the Company to make dies or provide according to the Buyers design the Buyer shall indemnify the Company against all actions, claims, costs, expenses, damages or losses arising from any infringement of any patent, trademark, design or copyright other industrial or intellectual property right of any other person, or arising for any lack of safety or other defect in the Goods due (in whole or in part) to faults or omissions in the items supplied by the Buyer.
- (b) The Buyer shall be responsible to the Company for ensuring the accuracy of the Terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- (c) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- (d) The Seller shall be under no liability whatsoever to the Buyer in respect of any loss damage or claim incurred by or made against the Buyer should any goods supplied by the Seller infringe any patent registered design copyright or other like protection or

## Beacon Trade & Tool Hire Ltd – Conditions of Sale

the provision of any statute, statutory instrument or regulation for the time being in force.

- (e) Unless otherwise agreed in writing all patterns, drawings, tools etc, produced by the Seller shall remain the property of the Seller and must not be used or copied by the Buyer.

### 8. CANCELLATION

No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including tile cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### 9. INSOLVENCY OF BUYER

(a) This clause applies if:-

- (i) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed of any property or assets of the Buyer, or
- (iii) the Buyer ceases or threatens to cease, to carry on business, or
- (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

(b) If the clause then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer.

(c) Notwithstanding any contract term allowing the Buyer credit payment shall become due and payable to the Company immediately on the termination of the Contract howsoever arising.

### 10. LAW AND WAIVER

(a) The contract shall in all respects be governed by English Law and the parties submit to the non- exclusive jurisdiction of the English Court in England. In particular it is hereby agreed that the Uniform Laws or International Sale of Goods Act 1967 and any statutory modifications or re-enactment thereof shall not apply to the Contract.

(b) No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

### 11. LIEN

The Company will (without prejudice to any other remedy available to it have in respect of all unpaid debts due from the Buyer a general lien on all property of the Buyer in the possession of the Company for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.