

A M Forktrucks Ltd - TERMS AND CONDITIONS OF SALE or HIRE

1. Contract

- 1.1 All orders or acceptance of quotation for goods are placed under these terms and conditions, which exclude any inconsistent terms and conditions that you, the buyer, seek to impose even though they may be submitted in a later document and/or purport to exclude our terms and conditions.
- 1.2 Our sales representatives are not authorised to vary these terms, nor to make any other representation or promise on our behalf. These must be put in writing and signed by a company director.
- 1.3 If you issue an order, no contract comes into existence until we have accepted the order in writing or (if earlier) we deliver the goods to you.
- 1.4 Quotations are open for acceptance for 30 days provided not previously withdrawn. These must be put in writing and signed by a company director.
- 1.5 These terms and conditions apply to all our sales or hire agreements 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 company director. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us, which is not set out in the contract. Nothing in this condition shall exclude or limit our liability for fraudulent misrepresentation.

2. Orders and Specifications

- 2.1 You are responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted to us and for providing us with any necessary information relating to the goods within sufficient time to enable us to perform the contract in accordance with those terms.
- 2.2 If the goods are to be manufactured or any process is to be applied to the goods in accordance with a specification you have submitted to us, you must indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which result from our use of your specification.
- 2.3 We reserve 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, where the goods are to be supplied to our specification, which do not materially affect their quality or performance.
- 2.4 Cancellation is not permitted except where expressly agreed in writing by one of our directors. If we agree to cancel you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

3. Price

- 3.1 The price of the goods is our quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in our published price list current at the date of acceptance of the order.
- 3.2 Unless otherwise stated all prices quoted are net ex works exclusive of VAT. Where we agree to deliver goods otherwise than at our premises, you are liable for our charges for transport, packaging, loading, unloading and insurance.
- 3.3 We reserve the right, by giving you notice, at any time prior to delivery to adjust the price of the goods to take account of any increase in our costs owing to factors beyond our control (including, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties and significant increases in the cost of labour and raw materials) affecting the cost of imported goods or materials.

4. Payment

- 4.1 Unless otherwise agreed, payment is due before delivery. If the goods are ready for you to collect or if you wrongfully fail to take delivery of the goods, payment shall be due when we notify you that the goods are ready for collection or (as the case may be) when we tender delivery of the goods.
- 4.2 For all special design or bespoke equipment, our payment terms are 30% of invoice total with order, 60% of invoice total before delivery and 10% of invoice total on commissioning.
- 4.3 Time for payment is of the essence. We reserve the right to charge interest at the rate of 5% above Barclays Bank PLC's base rate for the time being in force on overdue amounts. If an account is more than 14 days overdue, in addition to any other right or remedy we may have, we reserve the right after 7 days notice in writing to cancel any contract with you, suspend deliveries and charge for storage.
- 4.4 We reserve the right at any time at our discretion to demand security for payment before continuing with or delivering an order.
- 4.5 You have no right of set off, statutory or otherwise.

5. Delivery

- 5.1 All items quoted for delivery will be delivered to the address appearing in the quotation but in every other case delivery will be made when the goods leave our premises.
- 5.2 Time of delivery is not of the essence. Any date mentioned is given only as a guide and we are not liable for any loss whatsoever arising from our failure to deliver on the stated date.
- 5.3 Goods may be delivered in advance of any estimated delivery date after giving you reasonable notice.
- 5.4 We reserve the right to deliver by instalments and to invoice each delivery separately. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle you to repudiate or cancel any other contract or instalment.
- 5.5 If you fail to take delivery of the goods or fail to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then, without prejudice to any other right or remedy we may have:
  - 5.5.1 risk in the goods shall pass to you (including for loss or damage caused by our negligence); and
  - 5.5.2 the goods shall be deemed to have been delivered; and
  - 5.5.3 we may store the goods until actual delivery and charge you for storage; or
  - 5.5.4 we may sell the goods at the best price readily obtainable and (after deducting storage and selling expenses) account to you for the excess over the price under the contract or charge you for any shortfall below the price under contract.

6. Risk - The goods are at your risk as soon as they are delivered.

7. Title

- 7.1 Ownership of the goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:
  - 7.1.1 the goods; and
  - 7.1.2 all other sums which are or which become due to us from you on any account.
- 7.2 Until ownership of the goods has passed to you, you shall:
  - 7.2.1 hold the goods on a fiduciary basis as our bailee;
  - 7.2.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and
  - 7.2.3 maintain the goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us.
- 7.3 You may resell the goods before ownership has passed to you solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of your business at full market value; and
  - (b) any such sale shall be a sale of our property on your own behalf and you shall deal as principal when making such a sale.
- 7.4 Your right to possession of the goods shall terminate immediately if:
  - 7.4.1 you have a bankruptcy order made against you or you make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by you or your 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 your company or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to your insolvency or your possible insolvency; or
  - 7.4.2 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under these terms and conditions or any
  - 7.4.3 Other contract between the parties, or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
  - 7.4.4 You encumber or in any way charge any of the goods.
- 7.5 We shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from us.
- 7.6 You grant us, our 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 your right to possession has terminated, to recover them.
- 7.7 Where you are unable to determine whether any goods are the goods in respect of which your right to possession has terminated, you shall be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.
- 7.8 On termination of this contract, howsoever caused, our (but not your) rights contained in this condition 7 shall remain in effect.

8. Inspection

- 8.1 We shall make good any shortage in the goods and repair or replace any damaged in transit as soon as we are reasonably able to do so subject to you complying with all of the following conditions.
  - 8.1.1 You must whenever possible inspect the goods on delivery or on collection as the case may be;
  - 8.1.2 Where the goods cannot be inspected on delivery or on collection then the delivery note must be marked "not inspected";
  - 8.1.3 We are not liable for any shortage or damage in transit unless written notice of the alleged shortage or damage is given to us within seven days of delivery;
  - 8.1.4 Where any shortage or damage in transit is alleged, we are not liable in respect of such shortage or damage unless we are given a reasonable opportunity to inspect the goods before you use, alter or modify them
- 8.2 Save as provided for in clause 8.1, we shall have no liability whatsoever in respect of any shortage or damage to the goods in transit.

9. Warranty

- 9.1 We have title to the goods and the right to sell them.
- 9.2 No representation or warranty is given as to the suitability or fitness of the goods for any particular purpose and you must satisfy yourself in this respect. All specifications, drawings and particulars of weights, dimensions and performance submitted by us with a quotation are approximate only unless otherwise stated.
- 9.3 If on delivery, the goods are found to be in a condition or form that but for this condition would have entitled you to repudiate the contract or claim damages, we reserve the right to repair or replace the goods.
- 9.4 We shall repair, or at our option, replace goods found to be defective because of faulty materials or workmanship.
- 9.5 To claim the benefit of this warranty, you must have:
  - 9.5.1 informed us of a relevant defect in writing within 7 working days of discovering it and return the goods to us at your expense. The risk of accidental loss is yours while the goods are in transit to us.
  - 9.5.2 made no further use of the goods after discovering the defect;
  - 9.5.3 followed our oral or written instructions as to the storage, installation, commissioning, use or maintenance or (if there are none) good trade practice; or
  - 9.5.4 not altered or repaired such goods without our written consent.
- 9.6 In return for the benefit of this Warranty, you agree that no other terms whether conditions or warranties express or implied statutory or otherwise form part of this contract
- 9.7 We reserve the right to suspend service under this Warranty if any payment due from you under a contract between us is more than 14 days overdue. We are not liable for any loss or damage of any kind resulting from such suspension.
- 9.8 Each of the sub-clauses in this clause is to be treated as separate and independent.

10. Liability

- 10.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by S 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this contract.
  - 10.2 We are not liable for any pure economic loss, loss of profit, loss of business, depletion of goodwill or any type of indirect or consequential loss, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this contract.
  - 10.3 Our total liability for any one claim or for the total of all claims arising from any one act or default (whether arising from our negligence or otherwise) shall not exceed the contract price.
  - 10.4 Nothing in this clause is deemed to exclude or restrict our liability for death or personal injury resulting from our negligence or for fraud or for any other liability that cannot be excluded or restricted by law.
11. Battery Chargers
- 11.1 Installation of battery chargers is not included in the price.
  - 11.2 It is your responsibility to ensure that battery chargers are installed by a qualified electrician.
  - 11.3 We are not liable for loss or damage of any kind resulting from the incorrect installation of battery chargers.
12. Force Majeure
- 12.1 We are not liable for any failure to deliver the goods arising from circumstances outside our control, which would include Act of God, war, riot, sabotage, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.
  - 12.2 If we are prevented from delivering in such circumstances, we shall give you written notice of the fact as soon as reasonably practicable after discovering it.
  - 12.3 If the circumstances preventing delivery are still continuing 3 months after we have given you notice, either party may cancel the contract by written notice to the other.
  - 12.4 If the contract is cancelled in this way, we are not liable to compensate you for any loss or damage caused by the failure to deliver.

13. Notices

Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14. Proper Law and Jurisdiction - English law applies to this contract and any dispute arising in connection with it is subject to the exclusive jurisdiction of the English courts. mag/ jan08