

Kwik-Step Limited - Conditions of Sale

1. Definitions

- 1.1 "Seller" means Kwik-Step Limited.
- 1.2 "Buyer" means the person, firm, company or entity to whom the Seller sells the Goods.
- 1.3 "Goods" means the goods, materials or equipment sold by the Seller to the Buyer.

2. Basis of Sale

- 2.1 These conditions shall apply to every contract for the sale of Goods by the Seller to the Buyer to the exclusion of any other terms and conditions subject to which any order is made or purported to be made by the Buyer.
- 2.2 No variation(s) to these conditions shall be binding unless confirmed in writing by the Seller.
- 2.3 The Buyer acknowledges that it does not rely on any representations made by the Seller, its employees or agents when entering into the contract except those confirmed by the Seller in writing.
- 2.4 The Buyer acts entirely at its own risk upon any advice or recommendation by the Seller, its employees or agents as to the use, application, installation or storage of the Goods and the Seller shall not be liable for any such advice or recommendation.
- 2.5 Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders

- 3.1 A quotation by the Seller shall only constitute an invitation to treat.
- 3.2 All orders submitted by the Buyer are subject to acceptance by the Seller in writing. The contract is made when the Seller posts, faxes or e-mails the acceptance of order to the Buyer.
- 3.3 The Seller reserves the right to make any changes to the specification of the Goods which do not materially affect their quality or performance.
- 3.4 The Seller reserves the right to supply Goods which may not correspond exactly with the designs, sizes, weights, specification or other particulars given.
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods in accordance with a specification submitted by the Buyer then the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person (or entity) which results from the Seller's use of the Buyer's specification.
- 3.6 No order which has been accepted by the Seller can be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of the Buyer's cancellation.

4. Price

- 4.1 The price of the Goods shall be in accordance with the Seller's valid written quotation, or where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the Buyer's order. Prices quoted are valid for 30 days after which they may be altered by the Seller without notice.
- 4.2 Unless otherwise stated all prices are exclusive of any applicable VAT and of carriage and delivery charges which the Buyer shall pay to the Seller in addition.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specifications requested by the Buyer or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5. Payment

- 5.1 The Seller shall be entitled to invoice the Buyer on delivery or any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery in which event the Seller shall be entitled to invoice the Buyer at any time after the Seller notifies the Buyer that the Goods are ready for collection or the Seller has tendered delivery.
- 5.2 The Buyer shall pay the Seller's invoice in full within 30 days of its date and the Seller shall be entitled to recover the full amount invoiced notwithstanding that delivery (or collection) may not have taken place and that property in the Goods has not passed to the Buyer.
- 5.3 The time of payment shall be of the essence of the contract.
- 5.4 Where Goods are to be delivered (or collected) in instalments the Seller shall be entitled to invoice the Buyer on delivery of each instalment (or on notification by the Seller to the Buyer that the Goods are ready for collection or that the Seller has tendered delivery).
- 5.5 Where Goods are to be delivered (or collected) in instalments payment of all invoices shall be a condition of delivery (or collection) of subsequent instalments.
- 5.6 If the Buyer fails to make payment in full of any invoice on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - a) Cancel the contract or suspend any further deliveries to (or collections by) the Buyer.
 - b) Appropriate any payment made by the Buyer to such of the Goods (or any other Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit and notwithstanding any purported appropriation by the Buyer.
 - c) Charge the Buyer interest on any unpaid amount at 8% per annum above HSBC Bank base rate from time to time until payment in full is made.

6. Delivery

- 6.1 Any dates quoted for delivery are approximate only and the Seller shall not be liable for any delay in delivery of the Goods. Time for delivery shall not be of the essence of the contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.
- 6.3 If the Buyer fails to take delivery of the Goods (or fails to give the Seller adequate delivery instructions on reasonable notice) at the time stated for delivery, then without prejudice to any other right or remedy available to the Seller, the Seller is entitled at its option to:
 - a) store the Goods until actual delivery and charge the buyer for the costs (including insurance) of storage; or
 - b) sell the Goods and retain the proceeds and, after deducting all storage and selling expenses, charge the Buyer for any shortfall below the price under the contract.
- 6.4 Where delivery is not at the Seller's premises, it is the Buyer's responsibility to ensure that there is adequate access for delivery vehicles, to unload the Goods and to ensure that appropriate staff and equipment for unloading are available at the time of delivery.

7. Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer:
- a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property; and
 - b) provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Liability

- 8.1 The Seller shall be under no liability to the Buyer in respect of:
- a) any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - b) fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Seller's approval;
 - c) any warranty, condition or guarantee if the total price for the Goods has not been paid by the due date for payment; and
 - d) parts, materials or equipment not supplied by the Seller.
- 8.2 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 7 days from the date of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.3 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 the specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and the Seller shall have no further liability to the Buyer.
- 8.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods.
- 8.5 The Seller 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- a) Act of God, explosion, flood, tempest, drought, extreme weather conditions, epidemic, fire or accident;
 - b) occurrence or threat of war, terrorism, sabotage, insurrection or civil disturbance;
 - c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or utility;
 - d) import or export regulations or embargoes;
 - e) strikes, lock-outs or any other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - f) difficulties in obtaining raw materials, labour, fuel, power, parts or machinery;
 - g) power failure or breakdown of machinery; and
 - h) failure or malfunction of computer or communications equipment.
- 8.6 Except as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.7 The Buyer shall be responsible for ensuring compliance with any laws, bye-laws, legislation and any other relevant regulations, policies and procedures applicable or potentially applicable to the use of the Goods by the Buyer.

9. Insolvency of Buyer

- 9.1 This clause applies if:
- a) the Buyer (being any individual or partnership) makes any voluntary arrangement with its creditors or becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - c) the Buyer ceases, or threatens to cease, to carry on business; or
 - d) the Seller reasonably anticipates that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if any Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. General

- 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be given in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 10.2 No waiver by the Seller of any breach of any provision of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 10.4 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.