

TERMS AND CONDITIONS OF SALE OF JOHN TIBBETTS (EUROPARTS) LTD

DEFINITIONS

The Company means John Tibbetts (Europarts) Ltd.

The Customer means the person who buys or agrees to buy the goods from the Company.

Conditions means the terms and conditions of sale set out in the document and any special terms and conditions agreed in writing.

Goods means the articles which the Customer agrees to buy from the Company.

Contract means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these Conditions.

GENERAL

The following terms and conditions apply to all orders and goods supplied and no addition or variations shall be binding upon the Company unless specially agreed in writing. No oral representation shall be binding upon the Company or vary the terms hereon. All other conditions, warranties and representations, expressed or implied, whether under Common Laws, Statute or otherwise (includes without limitation, condition, merchantability or fitness for any purpose) except as to title are hereby excluded.

No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract or constitute a modification of these Conditions simply as a result of such document being referred to in the Contract.

ORDERS

No order shall be binding on the Company unless and until accepted or confirmed in writing by the Company. The Company reserves the right (without prejudice to any other rights) to cancel any uncompleted order or to suspend delivery in the event of any of the Customer's commitments to the Company not being met.

DELIVERY OF GOODS

DATES:

The Company will use its best endeavours to adhere as far as possible to any stated delivery dates but nevertheless, no claim will lie against the Company in respect of any damage or loss arising from delay in delivery or from non-delivery, whether such delay be caused by an act or acts of the Company, its servants or agents or by any other cause nor in such circumstances shall the Customer be entitled to cancel or terminate any order or contract. Time for delivery shall not be made of the essence by notice.

The Company will not be responsible for any loss or damage arising from strikes, lockouts or any other industrial dispute or from Act of God, War, National or Local Government restriction, prohibition or control, fire, flood, accidents or any other causes whatsoever beyond its control.

TERMS:

Unless otherwise agreed in writing the Company's Delivery Terms are: United Kingdom Customers – Ex Works; Export Customers – FOB UK Port or for despatches by road (TIR) or rail (Train Ferry) to the inland depot or station in the United Kingdom. Despatches by post, passenger trail or air, are Ex Works.

RISK OF LOSS OR DAMAGE:

The goods shall be at the sole risk of the Customer from the time of delivery to the Customer or to his agent or to any carrier acting for the Customer (including any such agent or carrier instructed by the Company acting on behalf of the Customer).

In the event of loss or damage in transit, no claim will be accepted unless the Company is advised in writing within three days of delivery or in the case of non-delivery within 21 days of despatch.

PROPERTY:

Property in and beneficial ownership of the goods shall remain in the Company (notwithstanding delivery of such goods to the Customer) until the Customer has paid both the full price of such goods and all other sums due to the Company but so that nothing in this condition shall effect or prejudice the provisions of condition 4(c). Pending such payment the following provisions of this condition shall be applicable to such goods:

The Customer shall at all times in his fiduciary capacity hold the goods and any proceeds, rights and claims arising therefrom to the Company's account and for the Company's benefit.

The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored.

The Customer shall mark and keep the Goods so as to identify them clearly as the property of the Company.

The Company shall be entitled at any time by its servants or agents at the Customer's expense to enter upon the Customer's premises and to recover and dispose of the Goods and the Customer shall make no claim against the Company in respect of any such entry or disposal save to recover any balance due to the Customer after the Company has disposed of the Goods and re-occupied all sums due from the Customer to the Company.

The Customer may in the ordinary course of business mix the Goods with other objects or convert the Goods into other objects whether by the process of manufacture or otherwise and whether or not such mixture or conversion renders the goods unidentifiable. In the event, the property in the mixture or the converted goods as the case may be shall forthwith pass to the Company and remain with the Company from the moment of mixture or conversion until the Customer has paid all sums whatsoever due to the Company, and the provisions of this Condition 4(d) shall apply to any such mixture or converted goods as if they were the Goods themselves.

The Customer may in the ordinary course of business sell or otherwise dispose of the Goods or any such mixture or converted goods as aforesaid to a third party, but shall hold the proceeds of any such sale or disposal and any rights or claims against third parties arising out of such sale or disposal in a fiduciary capacity for and to the account of the Company until the Customer has paid all sums whatsoever due to the Company and the Customer shall take all steps necessary to keep such proceeds separate from other monies, to pay over such proceeds to the Company, and to transfer to the Company any such rights or claims to the extent necessary to discharge in full the Customer's indebtedness to the Company.

The Customer shall not and it is hereby agreed that the Customer has no authority to enter into any contract or condition or give any warranty or representation which may render the Company liable to any third party for breach of such contract or condition or for inaccuracy of such warranty or representation or which may render the Company chargeable to Value Added Tax or other tax or duty, and insofar as any liability or charge as aforesaid may be incurred notwithstanding the foregoing it is hereby agreed that such liability or charge shall be incurred solely by the Customer as principal and the Customer shall indemnify the Company against loss or damage suffered or occasioned or incurred by the Company in respect of such liability or charge.

(e) No Goods delivered to the Customer which are in accordance with the Contract will be accepted for return without the prior written approval of the Company. If the Company agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of 25% of the invoice price. Such Goods must be returned by the Customer carriage-paid to the Company in their original packaging.

INSURANCE

Any damage to the goods in transit or claims for shortage should be notified to the carrier and the Company immediately following receipt at the Customer's premises, or port of entry as the case may be. The Company will, at the request of Export Customers and for the account of such Customers, arrange marine insurances of the goods and report shipment of goods to the insurers but shall not be liable for any negligence or otherwise for any error in complying with such request or omission to do so.

PRICE

The price payable shall be the price in force at the time of delivery and the Company's current price list does not constitute an offer to sell at the prices set out therein. The Company reserves the right to apply a minimum charge on small value orders.

PACKING

United Kingdom Customers:

Wooden or metal containers will be charged for if they are not returned carriage paid and in good condition with 30 days of delivery; the Company must be notified of the return at the date of despatch.

Export Customers:

Prices quoted include normal packing for export and such packing is non-returnable.

PAYMENT

United Kingdom Customers:

The Company's payment terms are 30 days' from date of invoice, unless otherwise agreed in writing.

Export Customers:

Orders from Customers outside the United Kingdom are accepted subject to either the following modes of payment having been arranged:

Net cash with order, OR

deposits at a bank nominated by the Company or an irrevocable documentary credit or a first-class bank, or an overseas bank bearing the confirmation of a first-class London bank;

unless other payment terms shall first have been agreed by the Company.

(c) The Customer hereby waives any cross-claim against any payment due and shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer

LICENCES

Goods for delivery to consignee outside the United Kingdom may be subject to United Kingdom Export Control as well as to Import Control at destination. Orders therefore cannot be entered unless the Customer advises, with relevant reference, that he has obtained any necessary import documents at destination. In addition, certain documents may be required to support the Company's application for Export Licences and no shipment can be processed until these documents are lodged with the Company.

DESCRIPTION AND SPECIFICATION

Whilst every effort is made to ensure accuracy the descriptions, illustrations and material contained in any catalogues, price lists, brochures, leaflets or other descriptive matter represent the general nature of the items described therein but do not form part of any order or contract or amount to any representation or warranty. The Company reserves the right to modify the design of goods without notice.

WARRANTY

Subject as provided below, the Company warrants all goods manufactured by it to be free from defects in material and workmanship, but its sole liability under such warranty shall be limited to replacing or issuing a credit as its option for any goods which within twelve (12) months or delivery are returned, carriage paid, to the Company and which the Company accepts as having been defective in materials and workmanship.

The Company shall incur no liability under this warranty:

unless the Goods have been paid for in full;

unless the Company is promptly notified in writing upon the discovery of any defects by the Customer;

for any goods in which the alleged defect is found on examination to have been caused in whole or in part by misuse, neglect, overload, unsuitable lubricant, improper installation or repair, alteration or accident;

for any transport, installation, removal, labour or other costs;

for any proprietary or other goods not manufactured by the Company but the Company will use its best endeavours to pass on to the Customer the benefit of any claim made by the Company and accepted by the manufacturer of such goods under a warranty given by the manufacturer.

LIABILITY

The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: any breach of these conditions; any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

Nothing in these conditions excludes or limits the liability of the Company: for death or personal injury caused by the Company's negligence; or under section 2(3), Consumer Protection Act 1987; or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.

Subject to the above:

the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

the Company shall not be liable for any loss or damage direct or consequential, whether in contract, tort or otherwise, of whatsoever nature or to whomsoever or whatsoever caused arising out of or through the use of any goods supplied by it. The Customer shall indemnify the Company against all claims made against the Company by any third party in respect thereof.

SERVICE

Any service or advice which may be offered by the Company, its servants or agents to users of its goods is rendered in all good faith but the Company shall not be liable for any loss or damage arising therefrom.

SPECIAL MATERIAL AND PRODUCTS

Where special material or products are required, it is a condition of sale that the Company reserves the right to deliver, and charge for, 10 per cent (10%) more or less than the quantity ordered. Unless otherwise agreed in writing the Company does not accept any restriction of its right to manufacture, sell or offer to any other Customers, goods which may be manufactured specially for a specific Customer or Customers or goods of like pattern.

EXHIBITIONS

It is a condition of sale that the Company's goods may not be advertised or exhibited at any Show, Display or Exhibition, other than on the purchaser's own premises, or entered for any event with the Company's approval first being obtained.

GENERAL

Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

(f) These Conditions and the Contract shall in all respects be construed and operate in accordance with English Law.