

CONDITION OF SALE

1. THE AGREEMENT

(a) These Conditions shall be deemed to be incorporated in all agreements for the sale of goods by Wieland Nemco Ltd ("Nemco") to the person, firm or company named in Nemco's Order Acknowledgement ("the Order Acknowledgement") as the Buyer ("Buyer") and are, together with any other agreements, warranties, conditions, representations and terms set out or referred to in the Order Acknowledgement, hereinafter called "the Sale Agreement" which represents the complete agreement of Nemco and Buyer regarding the sale of the goods listed or referred to in the Order Acknowledgement ("the Goods").

(b) Buyer and Nemco acknowledge that in entering into the Sale Agreement they do not rely on any representations which are not set out or referred to in the Order Acknowledgement.

(c) All orders are subject to acceptance by Nemco by issue of an Order Acknowledgement. Accepted orders may not be amended or cancelled except with Nemco's approval in writing signed on its behalf by one of its Directors.

(d) Nemco's catalogues, price lists and quotations do not constitute offers made by Nemco.

(e) No variation of these Conditions shall be binding on Nemco unless in writing and signed on its behalf by one of its Directors.

(f) The Sale Agreement is subject to any necessary local or governmental licence or consent for the import or the export of the Goods to Buyer or its nominee being obtainable by Nemco at the appropriate time.

(g) The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.

(h) The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Sale Agreement. No third party shall have any rights under that Act in relation to the Sale Agreement.

2. SELECTION OF GOODS

The selection of the appropriate Goods is based upon the Buyer's notification to Nemco of its specific requirements. Any errors or omissions supplied at any time by Buyer to Nemco resulting in the selection of inappropriate goods or in any loss or damage to Buyer shall be Buyer's sole responsibility. Unless Buyer orders from Nemco's stock or catalogue, Buyer shall give Nemco all necessary specifications and illustrations before or with its order. Nemco may, for the purpose of carrying out its obligations, retain any drawings, illustrations or specifications provided by the Buyer.

3. PRICES

(a) The prices for the Goods shall be as set out in the Order Acknowledgement except as otherwise provided for herein.

(b) If:

- (i) delivery of the whole or any part of a contract shall be due more than twenty eight days after the date of the Order Acknowledgement, or
- (ii) Buyer shall not give any or proper delivery instructions during such period, or
- (iii) Nemco shall be unable to deliver the Goods or any of them within such period in accordance with the Sale Agreement for any reason beyond its reasonable control, then, and in any such case, Nemco may, by written notice given at any time before the delivery of the Goods or of any instalment thereof, vary the price thereof as regards any of the Goods remaining to be delivered under the Sale Agreement if there is any increase or decrease in prices generally charged by Nemco for such or similar goods and/or to compensate for any currency fluctuations from exchange rates in effect on the date of the Order Acknowledgement affecting the Sale Agreement.

(c) Unless otherwise stated in the Order Acknowledgement, all packaging, insurance and freight charges and all Customs and Excise duties, import and/or export duties and all other taxes, tariffs and surcharges of whatsoever nature at the date of the Order Acknowledgement or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, delivery or use of the Goods or payment for them or upon packaging, insurance, freight or other charges shall be borne by the Buyer and are additional to the prices stated in the Order Acknowledgement.

4. PAYMENT TERMS

(a) Unless otherwise agreed, payment of the purchase price for the Goods shall be paid in full in Pounds Sterling on the date specified in the Order Acknowledgement without any discount, deduction, set-off or abatement on any grounds. If the price is not then paid, Nemco may bring an action for the price even though property has not then passed to the Buyer. Time of payment of the price shall be of the essence of the Sale Agreement.

(b) If any payment under the Sale Agreement shall become overdue, Nemco may (without prejudice to any of its other rights) charge interest on the overdue amount under the Late Payment of Commercial Debts (Interest) Act 1998 (as well after as before judgment).

5. DELIVERY AND RISK

(a) Delivery by Nemco's Transport or Carrier

Delivery shall occur when the Goods shall (by whatever means other than the Buyer's carrier) have arrived outside Buyer's premises whose address is stated on the Order Acknowledgement and thereupon the risk in the Goods shall pass to the Buyer.

If either:-

- (i) the Goods shall be found by the Buyer to have been damaged in transit, or
- (ii) Buyer finds on inspection that any part of the quantity of Goods invoiced or the subject of any delivery note has not been delivered,

Buyer shall notify Nemco (and, if known, the carrier) in writing or by fax or e-mail as soon as possible and in any event within 24 hours of delivery or of the contractual delivery date (if no Goods have been delivered) specifying the number of the contract relating to the Goods, the Goods damaged and the precise nature of the damage or the quantity and description of any missing Goods.

Buyer shall provide proper unloading facilities and labour which shall be available for deliveries from Monday to Friday in any week (save for Bank or Public Holidays) between the hours of 9.00am and 4.30pm.

(b) Buyer arranging own Transport or Carrier

Where Buyer arranges transport, delivery shall occur and the risk in the Goods shall pass on delivery at Nemco's premises to Buyer's transport or carrier and no claims shall be made by Buyer arising from damage or loss in transit.

(c) Where the Goods are sold F.O.B. or Free Alongside, the risk therein shall pass to Buyer when the Goods are delivered to the ship or docks (as the case may be) and in neither case shall Nemco be bound to give to Buyer notice pursuant to Section 32 (3) of the Sale of Goods Act 1979.

(d) Whilst Nemco shall make every reasonable effort to adhere to delivery dates specified in the Sale Agreement or by Nemco elsewhere, they are approximate only and cannot be guaranteed. Without prejudice to the foregoing provisions of this paragraph (d) in the event of non-delivery by a carrier other than Buyer's transport by a delivery date so specified, Buyer shall notify Nemco in writing or by fax or e-mail as soon as possible and in any event within twenty four hours of such date specifying the number of the contract relating to the Goods and the quantity and description of the Goods not delivered.

(e) Each delivery or part delivery of part of an order shall be considered a separate contract and Nemco's failure to make any delivery or part delivery shall not affect or vitiate the Sale Agreement as to other deliveries.

(f) Where the Sale Agreement does not specify a delivery date, if Buyer shall fail to give Nemco delivery instructions within thirty days of Nemco notifying Buyer that Goods are ready for dispatch or if Buyer refuses to accept delivery on a delivery date specified in the Sale Agreement Nemco may:-

- (i) treat the risk in such Goods as having passed to the Buyer;
- (ii) charge the Buyer for the storage of such Goods from the date of the said notification or the specified delivery date (as the case may be);
- (iii) give Buyer seven days notice to terminate the Sale Agreement and, if Buyer does not within that time accept delivery of such Goods, Nemco may (without prejudice to any of its other rights) at any time thereafter resell such Goods at the current market price and charge Buyer (i) the difference between the price obtained and the Sale Agreement price plus (ii) any costs or expenses attributable to such resale.

6. DESCRIPTIONS, QUANTITIES ETC.

Unless otherwise stated in the Order Acknowledgement:-

(a) all descriptions, illustrations, estimate for performance, weights and measurements provided by Nemco are approximate;

(b) Nemco may deliver with a tolerance of plus or minus 10 percent (10 %) of any quantity or weight specified in the Order Acknowledgement and Buyer shall be bound to accept the same as in accordance with the Sale Agreement but the price charged shall be adjusted accordingly.

7. PASSING OF PROPERTY

(a) No property in or title to the Goods shall pass to Buyer until their full price has been duly paid in cash to Nemco. Failure to pay the purchase price as aforesaid when due shall, without prejudice to any other remedies Nemco may have, entitle Nemco to repossess the Goods or so much thereof as Nemco may determine from any premises where they may be. For the purpose of repossessing the Goods or any part thereof Buyer shall permit Nemco, its employees or agents to enter such premises and Buyer shall pay Nemco the cost of removal and transport of the Goods or any part thereof. Nothing in this Condition shall confer any right on Buyer to return any of the Goods or to refuse or delay payment therefore.

(b) Until the purchase price has been paid as aforesaid, Buyer shall keep the Goods separate from other Goods or stock in Buyer's possession and shall mark the Goods as being Nemco's property.

(c) Without prejudice to the foregoing provisions of this Condition, the property in and title to the Goods shall pass to the Buyer if Nemco shall give notice in writing to Buyer that the property and title is to be treated as passing or having passed.

8. ACCEPTANCE OF LIABILITY

Nothing in the Sale Agreement shall exclude or restrict any liability of Nemco for death or personal injury resulting from the negligence of Nemco, its employees, agents or sub-contractors or for fraudulent misrepresentation or exclude any of Nemco's legal obligations under Section 12 of the Sale of Goods Act 1979.

9. WARRANTY

(a) Nemco warrants the Goods against defects in materials and workmanship which become apparent within four months after delivery of the Goods to Buyer ("the Warranty Period").

(b) Nemco's obligation under this warranty is limited to repairing or, at its option, replacing on an exchange basis any Goods or parts thereof as regards which such defects are detected upon delivery or during normal and proper use during the Warranty Period.

(c) If Buyer becomes aware of a defect in the Goods during the Warranty Period, Buyer shall promptly supply Nemco with written particulars of such defect and provide all necessary access and other reasonable facilities and all information required to enable Nemco to ascertain or verify the nature and cause of the defect claimed and carry out its warranty obligations.

(d) The warranty shall neither apply to any defect which results in Nemco's opinion from normal wear and tear, nor to any defect wholly or partially caused by an alteration or addition to the Goods other than by Nemco, or by use or storage of the Goods in a manner reasonably considered by Nemco to be improper, or for purposes for which the Goods were not designed, or by accident, neglect or events beyond Nemco's control occurring after physical delivery of the Goods to Buyer or its agents or carrier.

(e) When any defective Goods are replaced on an exchange basis or defective Goods are repaired, this Condition shall apply to the replacement or repaired Goods.

(f) Buyer shall be entitled to the benefit of the above warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition or warranty whatsoever, whether express or implied by statute, common law, trade usage, custom or otherwise.

10. BUYER'S RIGHTS AND REMEDIES

(a) As the Goods are incorporated in other Goods which are not designed or manufactured by Nemco, Buyer accepts that it is reasonable that if, and insofar as Nemco may be held to be legally liable to Buyer, Buyer's right of redress against Nemco shall be limited as expressly provided for in these Conditions.

(b) If Nemco's liability is established, notwithstanding Conditions 12, 13 and 14, Nemco shall be under no obligation to pay damages arising from loss or damage of any type referred to in those Conditions exceeding the purchase price of the Goods.

(c) For the purposes of the Sale Agreement "legal liability" shall include the legal liability of Nemco its employees, agents or subcontractors as found by any Court or competent authority and shall include, without limitation, (i) breach of any contractual obligation by virtue of the express or implied terms of the Sale Agreement and any fundamental breach and/or breach of fundamental term (ii) negligence arising by virtue of any act or omission which amounts to a failure to take reasonable care or exercise reasonable skill (iii) any misrepresentation or misstatement made by or on behalf of Nemco and (iv) any other breach of duty.

(d) This Condition shall not confer any rights or remedies on Buyer to which Buyer would not otherwise be entitled.

11. LIMIT OF DAMAGES FOR BREACH OF WARRANTY

If, notwithstanding Nemco's attempts to comply with its obligations under Condition 9, it is unable to do so, it shall pay monetary damages to Buyer not exceeding the purchase price of any defective Goods and the cost of any repairs thereto carried out by third parties with Nemco's express written permission.

12. DAMAGE TO TANGIBLE PROPERTY

Nemco shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused whether by reason of Nemco's negligence or otherwise to premises, plant or other tangible property.

13. ECONOMIC AND OTHER CONSEQUENTIAL LOSS AND CLAIMS BY THIRD PARTIES

Nemco shall not be liable for:-

- (i) economic loss, which, for the purposes of the Sale Agreement, shall include, without limitation, loss of profits, reputation, goodwill, business, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach; or
- (ii) any consequential or indirect loss or damage (whether or not described in Condition 13 (i) above), or
- (iii) any claim made against Buyer by any other party,

howsoever any such loss or damage or claim was caused and howsoever arising, whether by reason of Nemco's negligence or otherwise, even if such loss or damage or claim was or ought reasonably to have been, in the parties' contemplation at the date of the Sale Agreement as being likely to occur.

14. EVENTS BEYOND NEMCO'S CONTROL

Nemco shall not be liable under the Sale Agreement wherever and to the extent to which the fulfilment of its obligations is prevented, frustrated, impeded and/or delayed as a consequence of any "force majeure" and/or any circumstances whatever and howsoever arising beyond its reasonable control. Nemco undertakes to use its reasonable endeavours to overcome any such difficulties, but reserves the right to cancel, suspend or vary its obligations under the Sale Agreement.

15. INSURANCE

Buyer agrees that it is best able to estimate the extent and nature of the insurance cover suitable for its business and property from time to time and can effect at more economic rates than Nemco appropriate insurance cover for its business and property including cover against loss, damage, costs, claims and expenses referred to in Conditions 12, 13 and 14. Buyer therefore acknowledges that it is reasonable for Nemco to sell the Goods and fix the purchase price on the basis of the exclusions and limitations of liability set out in these Conditions and Buyer agrees that it will be responsible for effecting such insurance cover as may be appropriate to its business and property including (but not limited to) such insurance cover as mentioned above.

16. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Buyer shall indemnify Nemco against all damages, claims, costs and expenses arising out of any infringements or alleged infringement of any patent, copyright design, trademark or other intellectual property right which Nemco incurs arising out of its compliance with Buyer's requirements. Nemco shall not be bound to defend any proceedings brought against it by any third party in respect of any such actual or alleged infringement.

17. FINANCIAL RISK

If Buyer makes any composition or arrangement with creditors or goes into liquidation, whether voluntary or compulsory, or goes into administration, or if he or any partner commits any act of bankruptcy or if a receiver or administrative receiver is appointed in respect of any of Buyer's assets or if Buyer fails duly to pay for any Goods or comply with any other requirement of the Sale Agreement or if any time Nemco considers in its absolute discretion that the financial circumstances of Buyer do not justify the payment terms previously agreed, then, and in any such event, Nemco may, at its option, either require payment in cash before despatch of Goods remaining to be delivered or may cancel further deliveries without prejudice to any other rights or remedies of Nemco.

18. HEALTH AND SAFETY

Buyer agrees to pay due regard to any information or advice relating to the use of the Goods which Nemco may at any time furnish to it and agrees that before the Goods are used it will, if required by Nemco, furnish Nemco with a written undertaking to take any steps which Nemco may specify with a view to ensuring that the Goods will be safe and without risk to health when used.

19. ASSIGNMENT

Buyer shall not assign or otherwise transfer all or any of its rights, interests or obligations in or under the Sale Agreement without Nemco's prior written consent.

20. SEVERABILITY

If any provision of the Sale Agreement 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 Sale Agreement and the remainder of such provision shall continue in full force and effect.

21. ENGLISH LAW

The Sale Agreement shall be governed by English Law. Buyer and Nemco hereby agree to submit to the non-exclusive jurisdiction of the English Courts.