

WATLOW LIMITED CONDITIONS OF SALE

1. DEFINITIONS

- (1) "The Company" means Watlow Limited
- (2) "The Buyer" means the person, firm company organisation or public authority specified in the order.

2. GENERAL

- (1) Unless otherwise agreed in writing signed by a Director or other authorised officer in the Company, goods are supplied by the Company only on these conditions and no variation of or addition thereto (whether contained in any documents emanating from the buyer or made orally by any person acting or purporting to act on behalf of the Company) shall have effect. Should any of these conditions conflict with any conditions stated in the Buyer's order then these conditions shall prevail. The giving by the Buyer of any delivery instructions for the goods or any part thereof or the acceptance by the Buyer of delivery of the goods or any part thereof, or any conduct by the Buyer in confirmation of the transaction set out on the basis hereof after receipt by the Buyer of this document shall constitute unqualified acceptance by the Buyer of these conditions.
- (2) The company shall be deemed to accept the Buyer's order only on the sending by the Company of whichever shall be the first of :-
 - (a) Formal written acceptance or
 - (b) A dispatch or collection advice note or
 - (c) Invoice

3. PRICE

- (1) The company reserves the right of increase the price by an appropriate amount to take account of any increased cost caused by the alteration of the Buyer's instructions or lack of them or of labour or materials.
- (2) Unless otherwise stated prices quoted are ex works and exclusive of packaging, carriage and insurance all of which are payable by the buyer where provided.
- (3) All prices quoted are exclusive of VAT unless otherwise stated.

4. TERMS OF PAYMENT

- (1) Time of payment shall be of the essence of the Contract.
- (2) Payment for tooling costs and samples shall be made forthwith upon issue of invoice but all tooling shall remain the property of the manufacturer.
- (3) Payment for deliveries falls due in full 30 days from the date shown on the invoice.
- (4) In the event of the Buyer fails to make payment in full by the due date. The Buyer's right to discount (if any) shall be forfeited and the buyer shall pay interest on the amount outstanding at the rate of 4% above the current base rate of Allied Irish Bank (GB) for the time being calculated from day to day from the date upon which payment became due to the date of actual payment.
- (5) In the event of the Buyers failure to pay on the due date as aforesaid the Company shall be entitled at its absolute discretion to withdraw credit facilities at any time by notice in writing to the Buyer and to suspend all further deliveries under this or any other contract with the Buyer and if such payment shall remain in arrears for more than seven days after written demand shall be made therefore the Company shall have the right to sell to third parties the outstanding balance hereunder or under any contract and in any case without prejudice to any claim by the Company against the Buyer.

5. DELIVERY

- (1) The Company will use its best endeavours to deliver the goods on the date or dates specified in the order of otherwise by either party, but such dates are approximate dates only and not guaranteed and time for delivery is not of the essence of the contract. The Company shall not be liable in respect of any claim arising out of or consequent to a failure to meet such dates and such failure shall not entitle the buyer to repudiate or cancel the contract unless such failure shall have been caused by wilful default or neglect of the Company.
- (2) Unless otherwise agreed the Company may make partial deliveries of goods ordered.
- (3) In the event of delivery being delayed for a period of six months from the said date or dates by war, invasion, hostilities (whether war has been declared or not) Civil war or unrest, rebellion, insurrection or military or usurped power or by any acts of foreign governments or by any statute, rules or regulations, order or requests issued by any government department or other duly constituted authority or from strikes, lock-outs, breakdown of plant or from any other cause (whether or not of a like nature) beyond the Company's control either party may terminate the contract by notice in writing to the other.
- (4) Delivery shall be deemed to take place either:-
 - (a) On the physical handling over the goods to the Buyer or his designated carrier or agent or
 - (b) On consignment of the goods by the Company to the Carriers for delivery in the normal course of business or
 - (c) On the removal of the goods from the Company's premises when the Company shall at the request of the Buyer, agree to transport the goods by its own transport or by carriers designated by the Company or
 - (d) Upon the placing of the goods in the Company's own storage facilities either at the request of the Buyer or his failure or refusal to accept delivery.
- (5) The risk in the goods shall pass to the Buyer on delivery as aforesaid and the Company shall incur no liability whatsoever for loss of or damage to the goods in transit or storage or for any loss or damage whether consequential of otherwise suffered by the Buyer as a result of the loss or damage to the goods in transit or storage unless the same shall be caused by the negligence of the Company in which event the Company's liability shall be limited to the value of the goods.
- (6) Non delivery of the goods shall be notified to the Company within seven days of the date of despatch indicated by the Company.
- (7) The Company and (where relevant) the carriers must be notified within ten days of receipt of the goods of any damage or shortage and the Buyer must retain for inspection any damaged goods and packaging.
- (8) The Company shall incur no liability whatsoever in the event of failure by the Buyer to notify the Company of non-delivery, damage or shortage as above.

6. DELIVERY BY INSTALMENTS

If the order is for delivery by instalments, the cancellation or rejection for any reason of any instalment shall not affect the remainder of the contract, each instalment being deemed to be a separate contract except in the case of cancellation by the Company for failure on the Buyer's part to pay for goods as delivered as provided in Clause 4.

7. STORAGE

- (1) If for any reason the Buyer fails or refuses to accept delivery of the goods or any part thereof at the time when the goods are due and ready for delivery the Company may if its storage facilities permit store the goods and take reasonable steps to safeguard and preserve them until their actual delivery.
- (2) Storage of the goods shall be at the Buyers risk and expense.
- (3) If the Buyer shall fail to take delivery of the goods within twenty eight days of notification that they are ready for delivery or having been stored that storage facilities are no longer available the Company shall have the right to sell, dispose of or otherwise deal with the goods and the Buyer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Buyer's failure to take delivery of the goods or of such sale.

8. FINANCIAL CONDITION

If in the Company's judgement the Buyer's financial condition does not justify the terms of payment specified the Company may cancel any unfulfilled orders unless the Buyer shall upon written notice pay for all goods delivered or shall pay in advance for all goods ordered by not delivered at the Company's option.

9. PRODUCT DIMENSIONS AND QUANTITIES

Actual dimensions of the products may vary slightly from those specified in accordance with information published by the Company in relation to individual products from time to time. Actual quantities of products contained in each delivery may vary slightly from those indicated in the Buyer's order. The following variations in quantities shall be permitted:

Quantity Ordered	Variation
1-4	+/- 1
5-9	+/- 2
10-24	+/- 3
25-49	+/- 4
50-74	+/- 5
75-99	+/- 5%
100 or over	

If the Buyer specifically requests delivery of exact quantities a surcharge equal to 10 per Centum of the price shall be added thereto.

10. RETURNS

- (1) Except by prior written agreement the Company will not accept the return of any standard goods order by the Buyer.
- (2) Where the Company agrees to accept the return of any standard goods it will only accept those goods which are undamaged and in a marketable state.
- (3) The Company will only accept the return of any standard goods upon the payment by the Buyer of a handling charge of a sum equivalent to twenty per cent of the total invoice price of those goods subject to a minimum

- (4) charge of £25.
The Company will in no circumstances accept the return of any modified goods.

11. PROTOTYPES

In the event of the Buyer ordering non standard goods or the Company supplying any goods which the Company denominates as a "Prototype" or "Prototypes", it is understood and agreed that the Company has had these goods manufactured and assembled or supplied in an attempt in good faith to achieve the design specifications or description of the goods described by the Buyer. However, the Company will not arrange for, unless it has been specifically previously agreed to do so in writing, a life cycle test of the Prototypes. Nor will, nor does, the Company make any representation, guarantee or warranty that such Prototype will successfully perform to the Buyers standards (whether notified or not) in the end product into which the Prototype is incorporated. All Prototypes are offered for testing and acceptance by the Buyer. Any subsequent order for the supply of production quantities of goods previously prototyped by the Company will be deemed to have been tested and accepted as to design and performance standards by the Buyer. Further, since Prototypes are frequently hand assembled in laboratories by the manufacturer from "on-hand materials", as opposed to assembly methods for factory production, there may be differences in assembly methods and material sizes and types between production units and Prototypes. The Company will, upon the request of the Buyer at any time prior to delivery of the production units, provide further information as to the assembly and material differences between the prior "Prototype" and the production unit. If such differences are present, the Buyer shall be responsible for testing and acceptance of production units which vary from "Prototypes".

12. WARRANTY

- (1) Goods sold by the Company are warranted free from defect in materials and workmanship for a period of six Months (or longer if otherwise stated in writing) from the date of delivery.
- (2) Unless the Buyer notifies the Company of any such defects in materials or workmanship within six months of the delivery of the goods this warranty shall not apply. If such notification is given and the goods are found to be defective then the Company will repair or (at its opinion) replace the defective goods. **PROVIDED THAT** this warranty shall not apply to any goods.
- (a) which have been tampered with in any way outside the Company's premises or
- (b) which have been stored in unsuitable conditions or for an excessive period of
- (c) have been subject to misuse, negligence or accident.

13. INTELLECTUAL PROPERTY

- (1) The Company reserves unrestricted rights of ownership and copyrights on its quotations, drawings and other documents. These must not be made available to third parties. Drawings and other documents forming part of quotations must be returned to the Company immediately upon request if the Company is not given the order.
- (2) The Buyer will indemnify the Company and any Supplier of the Company in respect of all losses claims costs and expenses suffered by any such person arising from any infringement of the rights of any third party in relation to goods manufactured by the Company or any such supplier to the order of the Buyer.

14. LIMITATION OF LIABILITY

- (1) Except as expressly stated above all other warranties, conditions and representations express or implied statutory or otherwise are (to the extent that they may in Law be excluded) hereby excluded and the Company shall not be liable in contract tort or otherwise for any loss, damage, expense or injury arising out of or in connection with the use or failure of the goods or any defect in them provided always that it shall accept:
- (a) liability in respect of death or personal injury arising out of the Company's negligence
- (b) such liability limited to the value of the goods supplied by the Company in respect of other loss or damage arising out of the Company's negligence.
- (2) The limitation of liability herein contained shall in no way affect such consumer rights (if any) as the Buyer may have under the Sale of Goods Act 1979 or the Consumer Protection Act 1987.

15. PRODUCT LIABILITY

- (1) Where the Company's goods are incorporated in or form a component part of any further product ("the subsequent product") to be manufactured, assembled or produced by the Buyer or by any person with whom the Buyer shall contract for that purpose, the Buyer shall:
- (i) ensure that all instructions or guidelines given or published from time to time by the Company in relation to the incorporation installation connection and / or use of the Company's goods are strictly adhered to and
- (ii) ensure that adequate instructions are given for the safe installation and / or use of the subsequent product so that the same are brought to the notice of all likely users thereof the Buyer shall indemnify the Company against all liability, proceedings, costs, claims and expenses in respect of any injuries loss or damage howsoever arising from the use of the subsequent product to whom so ever caused.

16. DEFAULT OR INSOLVENCY OF BUYER

- (1) If the Buyer defaults in any way in its commitments with the Company or suffers any distress or execution upon its property or assets or makes or offers to make any arrangements or composition with its creditors or commits an act of bankruptcy or is the subject of an administrative order or has a Receiver appointed over all or a substantial part of its assets or a resolution passed or petition filed for winding up then the Company shall have the right (without prejudice to any other remedies) to cancel any uncompleted order or to withhold or suspend delivery.
- (2) In the event of an order being cancelled by the Company in the above circumstances or being cancelled by the Buyer the Buyer shall indemnify the Company against all loss (including profits) costs (including labour, materials and overheads) and all other expenses and damage incurred by the Company in connection with the order and its cancellation (the Company giving credit for the value of any materials sold or utilised for other purposes).

17. RETENTION OF TITLE

- (1) Notwithstanding risk in the goods passing in accordance with Clause 5.5 hereof title in the goods shall not pass to the Buyer until whichever shall be the first to occur of the following:
- 1.1 Payment being received by the Company for the goods and no other amounts then being outstanding from the Buyer to the Company in respect of other goods supplied by the Company.
- 1.2 The Buyer selling the goods in accordance with the provisions of these terms and conditions in which case title to the goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer's customers; and
- 1.3 The Company waiving its rights under this sub-clause (1) in respect of specified goods whereupon title to such goods shall forthwith vest in the Buyer.
- (2) Before title has passed to the Buyer under the terms of sub-clause (1) without prejudice to any of its other rights, the Company shall have the right to recover or resell the goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.
- (3) Should the Buyer alter the goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("altered goods") will pass into the ownership of the Company until payment due under all contracts between the Company and the Buyer has been made in full and all the Company's rights hereunder shall extend to the altered goods.
- (4) Until payment due under all contracts between the Buyer and the Company has been made in full;
- 4.1 the Buyer shall hold upon trust for the Company the goods and altered goods
- 4.2 in the event of the sale or hire of the goods or altered goods by the Buyer he shall hold the proceeds of such sale or hire on trust for the Company in a separate bank account opened by the Buyer for this purpose
- 4.3 the Company shall be entitled to trace all such proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer
- 4.4 in the event of sale or hire of the goods or the altered goods by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Company if required to do so in writing by the Company .
- (5) As the insurable risk in the goods shall pass to the Buyer as soon as the goods are delivered to him or to his order and pending disposal the Buyer shall keep the goods insured in the amount of the price at which the goods are sold to the Buyer against all insurable risks.
- (6) If goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of any such insurance as trustee for the Company

18. GOODS SOLD F.O.B.

Where goods are sold f.o.b. the responsibility of the Company shall cease immediately the goods are placed on board ship and the Company shall be under no obligation to give the Buyer the notice specified in sub-section 32(3) of the Sale of Goods Act 1979.

19. ENGLISH LAW

Every contract to which these Terms and Conditions shall apply be construed in accordance with and governed in all respects by the Laws of England and the Company and the Buyer submit irrevocably to the jurisdiction of the English Court.