

1. Interpretation

1.1. Definitions:

1.1.1. **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document and the Schedule as amended from time to time in accordance with clause 11.4. **Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions. **Customer:** the person or firm who purchases the Goods from the Supplier. **Force Majeure Event:** means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the affected party, or companies in the same group as the affected party); (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the affected party); and interruption or failure of utility service. **Goods:** the goods (or any part of them) set out in the Order. **Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form, in writing or by telephone or overleaf, as the case may be. **Schedule:** the schedule to these Conditions. **Specification:** any specification for the Goods, including any related drawings or designs, that is agreed in writing by the Customer and the Supplier. **Supplier:** Walraven Ltd, (registered in England and Wales with company number 01352033).

1.2. Interpretation:

1.2.1. a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2. any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3. a reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Supplier.
- 2.5. A quotation for the Goods given by the Supplier shall not constitute an offer.

3. Goods

- 3.1. The Goods are described in the Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1. The Supplier shall deliver the Goods to, or if it is agreed that the Customer will collect the Goods, the Customer shall collect the Goods from the location set out in the Order or such other location as the parties may agree (**Delivery Location**). If the Customer wishes to collect the Goods it must specify this at the time of the Order.
- 4.2. Delivery is completed on the completion of:
 - 4.2.1. where the Supplier is to deliver the Goods, the unloading of the Goods at the Delivery Location;
 - 4.2.2. where the Customer is to collect the Goods, the loading of the Goods at the Delivery Location; or
 - 4.2.3. where the Supplier uses a third party carrier, the unloading of the Goods at the carrier's premises.
- 4.3. Where the Customer is to collect the Goods, it shall observe and procure that its employees and agents shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Supplier's premises from time to time and that have been communicated to the Customer.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate and timely delivery instructions or any other instructions, information or documentation that are relevant to the supply of the Goods.
- 4.5. The Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to the Supplier (or the Supplier's third party carrier, if applicable) within 10 days of delivery or (in the case of shortage or loss) the proposed delivery date of the Goods and that the Goods have been handled in accordance with the Supplier's stipulations. Any remedy under this condition 4.5 shall be limited, at the option of the Supplier, to the replacement or repair of any Goods which are proven to the Supplier's satisfaction to have been lost or damaged in transit.
- 4.6. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions, information or documentation that are relevant to the supply of the Goods.
- 4.7. If the Customer fails to take or accept (as the case may be) delivery of the Goods within three Business Days of:

- 4.7.1. where the Supplier or a third party carrier is to deliver the Goods. the Supplier or its third party carrier attempting to deliver the Goods; or
- 4.7.2. where the Customer is to collect the Goods, the Supplier notifying the Customer that the Goods are ready for collection,
 - 4.7.2.1. then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract;
 - 4.7.2.2. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which (as the case may be) the Supplier or its third party carrier attempted to deliver the Goods or the Supplier notified the Customer that the Goods were ready for collection; and
 - 4.7.2.3. the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8. If ten Business Days after the day on which (as the case may be) the Supplier or its third party carrier attempted to deliver the Goods or the Supplier notified the Customer that the Goods were ready for collection, the Customer has not taken or accepted (as the case may be) delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods..
- 4.9. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery, the Goods shall:
 - 5.1.1. conform in all material respects with the Specification;
 - 5.1.2. be free from material defects in design, material and workmanship; and
 - 5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2. Subject to clause 5.3 and clause 9, if:
 - 5.2.1. the Customer gives notice in writing to the Supplier that some or all of the Goods (the **Defective Goods**) do not comply with the warranty set out in clause 5.1;
 - 5.2.1.1. in the case of defects apparent on reasonable inspection, within 10 Business Days of delivery; and
 - 5.2.1.2. in the case of defects not apparent on reasonable inspection, within a reasonable time of discovery;
 - 5.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
 - 5.2.4. the Supplier shall:
 - 5.2.4.1. at its option, repair or replace the Defective Goods, or refund the price of the Defective Goods in full and
 - 5.2.4.2. in the event that defects notified in accordance with clause 5.2.1.2 occur in Goods that have been installed, make a contribution towards the reasonable costs actually incurred by the Customer in connection with the physical removal of the Defective Goods and the installation of replacement or repaired Goods supplied by the Supplier in accordance with clause 5.2.4.1.
- 5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 and such Goods shall not be deemed to be Defective Goods in any of the following events:
 - 5.3.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 5.3.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.6. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2. Title to the Goods shall not pass to the Customer until the earlier of the date on which:
 - 6.2.1. the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 6.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
 - 6.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4. Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 6.4.1. it does so as principal and not as the Supplier's agent; and
 - 6.4.2. title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:
 - 6.5.1. the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2. the Supplier may at any time:

- 6.5.2.1. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1. The price of the Goods shall be the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 7.2.1. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 7.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3. Unless otherwise agreed in writing, the price of the Goods:
 - 7.3.1. excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 7.3.2. shall be ex works and exclude the costs and charges of packaging and transport of the Goods, which shall be invoiced to the Customer where appropriate.
- 7.4. Unless otherwise agreed in writing, the Customer shall pay the Supplier's invoice in full and in cleared funds within the period set out in the Schedule.
- 7.5. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 7.6. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank Plc's base rate from time to time or, if higher, the rate payable under the Late Payment of Commercial Debts (Interest) Act 1988 (as amended from time to time). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Termination

- 8.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
 - 8.1.1. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - 8.1.2. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 8.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 8.1.4. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1.1 to clause 8.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Limitation of liability

- 9.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2. fraud or fraudulent misrepresentation;
 - 9.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 9.1.4. defective products under the Consumer Protection Act 1987; or
 - 9.1.5. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2. Subject to clause 9.1:
 - 9.2.1. the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 9.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid or payable for the Goods giving rise to the claim, save that where the Supplier is also liable to make a contribution towards the reasonable costs of physical removal of the Defective Goods and the installation of replacement or repaired Goods in accordance with clause 5.2.4.2, the amount of such contribution shall not exceed 3 times the price paid or payable for the relevant Goods.

9.2.2.1. The Customer accepts as reasonable that the Supplier's total liability for Defective Goods and delivery of the Goods shall be as set out in these Conditions; in fixing that limit the Supplier has had regard to the price of the Goods, the nature of the Goods, the use they will receive, and the resources available to each party including insurance cover, to meet any liability.

9.2.2.2. Each of the sub-clauses of clause 9.2 comprises a separate limitation of the Supplier's liability to the Customer.

10. Force majeure

10.1. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

11. General

11.1. Assignment and other dealings.

11.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2. Confidentiality.

11.2.1. Each party undertakes that it shall not at any time during this agreement, and for a period of 12 months after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.2.2. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

11.2.2. Each party may disclose the other party's confidential information:

11.2.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and

11.2.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11.3. Entire agreement.

11.3.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.3.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.4. **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.6. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.7. Notices.

11.7.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

11.7.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

11.7.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.8. **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.9. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.