

TERMS & CONDITIONS OF SALE & USE

1. DEFINITIONS

In these Terms and Conditions the following expressions shall have the following meanings:-

The Seller shall mean Loadhog Limited whose Registered Office is at The Hog Works, Hawke Street Sheffield, S9 2SU, United Kingdom.

The Purchaser shall mean the person, firm or company to whom Loadhog is selling.

The "Goods" and/or "Services" shall mean the goods, materials, equipment or services (as applicable) being sold by the Seller to the Purchaser

"Export" orders shall mean orders for delivery of Goods by the Seller outside the United Kingdom.

2. CONDITIONS APPLICABLE

- 2.1 The placing of a telephone or written order for the Goods and/or Services by the Purchaser will be deemed to be an offer by the Purchaser to purchase the Goods and/or Services subject to these conditions to the exclusion of any other terms and conditions unless otherwise specifically accepted by the Seller in writing.
- 2.2 A quotation shall only constitute an invitation to treat. All orders are subject to acceptance by the Seller on an official form of written acknowledgement which shall constitute acceptance of the order and shall create a legally binding contract subject to these conditions (or as varied if a variation has been specifically accepted by the Seller in writing or if varied in accordance with clause 17.)

3. SPECIFICATIONS

- 3.1 All illustrations, specifications and descriptions are given as a general idea of the Goods described and do not form part of the contract. The Seller reserves the right at its absolute discretion to make any changes to the Goods and/or Services which do not in the Seller's opinion materially affect the quality of the Goods and/or Services.

4. PRICES

- 4.1 The price displayed is exclusive of VAT, but is inclusive of delivery charges.
- 4.2 Unless a fixed price is specified in the order acknowledgement or is otherwise specifically agreed in writing the price of the Goods shall be as per the Seller's price list current at the date of despatch of the Goods.

5. DELIVERY AND PACKAGING

- 5.1 The Seller will endeavour to deliver the Goods and/or commence the Services to meet the Purchaser's delivery requirements.
- 5.2 Delivery dates are estimates only and is not of essence of the contract and the Seller shall not be liable for any loss or damage resulting from any delay in delivery.
- 5.3 If the performance of any of the Seller's obligations shall be prevented, hindered or interfered with by any cause or reason beyond the Seller's control, then the Seller shall have the option to suspend or cancel any obligation on its part then unperformed.
- 5.4 The Seller is entitled to deliver Goods by instalments.

- 5.5 Risk in Goods will pass to the Purchaser on delivery and the Purchaser should insure accordingly.
- 5.6 The Seller shall be responsible for the delivery of the Goods (other than those governed by clause 5.7) to the Purchaser's site but the cost of such delivery shall be charged to the Purchaser on all contracts for Goods where the aggregate price is under the minimum amount specified in the Seller's price list as amended from time to time. The Purchaser shall off-load the Goods promptly on their arrival at site and shall provide and bear the cost of clear access to and at the point of delivery together with the means of off-loading.
- 5.7 In the case of Export orders the Seller shall be responsible for the cost of delivery F.O.B. Port of Shipment UK and for the delivery of the Goods to the said Port unless other terms are in this respect specified in the said order acknowledgement in which case such terms shall govern the Sellers' responsibility for delivery.
- 5.8 If the Purchaser shall fail to take delivery of any Goods the Seller may at its option but without prejudice to any other rights or remedies they may have, sell the Goods for the account of the Purchaser and the Purchaser shall be liable for all costs and expenses incurred by the Seller and the difference between the proceeds of sale and the price of the Goods hereunder.

6. PAYMENT

- 6.1 Credit accounts are opened subject to status and payments are due strictly within 30 days from the date of the invoice. If no account is opened, payment is required in full with the order before despatch of the goods. No set-off is permitted for any reason.
- 6.2 The money of accounts shall be Sterling.
- 6.3 Where only part of the Goods ordered are despatched, payment shall be made of the contract price attributed to that part.
- 6.4 Payment by cheque shall be treated as received once your cheque has cleared.
- 6.5 Time of payment shall be of the essence and if any amount is not paid on the due date the Purchaser shall pay to the Seller on demand interest at the annual rate of 4% above the base lending rate of Barclays Bank plc such interest to accrue from day to day and to run after as well as before any judgement.
- 6.6 If any account of the Purchaser is overdue for payment or the Purchaser becomes bankrupt or (being a company) goes into liquidation or suffers a receiver to be appointed to make an assignment or arrangement for the benefit of creditors or defaults in any obligation to the Seller or ceases or threatens to cease to trade or in the Seller's absolute opinion serious doubts arise as to the Purchaser's solvency the Seller is entitled without prejudice to its other rights to suspend the performance of any of its obligations to the Purchaser or (whether or not notice of suspension has been given) to cancel such performance and treat the contract as discharged.
- 6.7 If the Purchaser places an order for Goods for which the Seller is asked to tailor to the Purchaser's specification, or the quantity is such that the Seller is required to place a specific order with its suppliers, the Seller may ask for payment in full in advance.
- 6.8 The Purchaser shall be liable for any bank charges incurred by the Purchaser's or Seller's bank and the Goods shall not be released for any payments received with shared bank charges until the Purchaser pays these charges in full.
- 6.9 Where Goods are to be delivered by instalments payment for each instalment shall be a condition of delivery of subsequent instalments.
- 6.10 The Purchaser shall inspect all Goods immediately upon delivery and shall within 7 days from delivery notify the Seller in writing of any matter or thing by reason of which they may allege that the Goods are not in accordance with the contract. If the Purchaser shall fail to give such notice within such

period it shall conclusively be deemed that the Goods are as to quantity, number, weight, volume and in all respects in accordance with the contract and that the Purchaser has accepted them and the Purchaser shall have no right to reject the Goods but shall be bound to pay for the same accordingly

7. RISK AND TITLE

- 7.1 The risk in the Goods shall pass from the Seller to the Purchaser upon delivery of such Goods to the Purchaser, or into custody on the Purchaser's behalf (whichever is the sooner). The Purchaser should therefore insure accordingly provided that in the case of Export orders the Goods shall be at the Purchaser's risk when they pass the ship's rail (unless terms other than FOB or CIF are specified in the said Order Acknowledgement in which case such terms shall govern the position) and the Seller shall not be under any obligation to give a notice to the Purchaser under the Sale of Goods Act 1979 Section 32(3).
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full for all Goods delivered to the Purchaser under this and all other contracts between the Seller and the Purchaser for which payment of the full price of the Goods thereunder has not been paid. Until such full payment the Purchaser shall keep the Goods for the Seller in the capacity of bailee and shall store the Goods in such a way that they are clearly the property of the Seller and shall deal with the Goods as directed by the Seller. The Purchaser shall insure the Goods to their full value and the proceeds of any insurance claim will be paid to the Seller. If the Purchaser makes default in payment or if for any other reason the Seller treats this contract as discharged the Seller may repossess the Goods and the Purchaser hereby irrevocably licences the Seller to enter into the Purchaser's premises for the purpose of such repossession.
- 7.3 Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Seller and the Purchaser under which the Goods were delivered.
- 7.4 Until the Purchaser has paid the Seller in full for all of the Goods and all other Goods, the subject of any other contract with the Seller, the Purchaser is licensed to sell the Goods to any bona fide third party at the best obtainable price on condition that the Purchaser shall place and keep intact and identifiable the entire proceeds of sale in a separate bank account. If the Purchaser makes default in payment or if for any other reason the Seller treats this contract as discharged, the Seller shall be entitled to trace into such proceeds for the amount owing to them by the Purchaser in respect of the Goods and all other goods the subject of any other contract with the Seller.

8. WARRANTIES AND LIABILITY

- 8.1 The Seller accepts liability for any death or personal injury caused by the negligence of the Seller or the Sellers' employees acting in the course of their employment and the provisions of sub-clauses 8.5 and 8.6 hereof shall not apply to any such liability.
- 8.2 Goods sold by the Seller are guaranteed against defective materials or faulty workmanship for a period of one (1) year from the date of delivery but only to the extent that any Goods or any part thereof are returned to the Seller and upon examination by the Seller found to have been defective at the time of despatch and meet the conditions referred to in clause 8. 3.
- 8.3 Goods which are guaranteed under clause 8.2 will be repaired or replaced (or the part in question) by the Seller at its option free of charge or at its sole discretion the Seller may request the return of the Goods and refund the price (or proportionate part of the price) provided that and as a condition of such guarantee :-
 - (i) the Purchaser has complied with its obligations hereunder and in particular has made Payment in full for the Goods.

- (ii) the Purchaser has not carried out or arranged any further use, repair, alteration process, operation or treatment to the Goods without the Sellers' written consent.
 - (iii) the Purchaser notifies the Seller in writing of such defect or fault within a period of 1 month from becoming aware of the defect.
 - (iv) the defect does not arise as a result of the condition of the Purchaser's premises.
 - (v) the defect does not arise as a result of the Purchaser's negligence or (if the Purchaser is a business) the negligence of the Purchaser's employees or subcontractors.
 - (vi) the defect does not arise as a result of fair wear and tear, accident, misuse, wilful damage or materials or equipment used in conjunction with the Goods not manufactured by the Seller.
 - (vii) the defect does not arise because the Purchaser has failed to follow the Seller's instructions (whether oral or in writing) as to the storage, assembly, installation, commissioning, use or maintenance of the Goods.
- 8.4 To the extent that the Seller undertakes responsibility for the delivery of the Goods, its liability for damage to the Goods in transit or for non-delivery or short delivery of the Goods arising from any act, neglect or default of the Seller or the Sellers' employees or independent contractors or howsoever arising or caused shall be extinguished if the Purchaser does not notify the Seller and the Carrier in writing of any such claim within 10 days of the delivery date.
- 8.5 Subject to the foregoing provisions of this Clause the Seller shall have no liability to the Purchaser for any death or personal injury or loss of or damage to the Goods (including loss or damage in transit or non-delivery) or other property or any other loss, damage, delay or liability whatsoever (including consequential loss or damage) arising from any act, neglect or default of the Seller or the Sellers' employees or independent contractors or howsoever arising or caused.
- 8.6 All liabilities of the Seller to the Purchaser determined by a court of law as not having been excluded in this agreement shall be limited in total to the total price of the Goods as shown on the Sellers' invoice.
- 8.7 The Purchaser shall indemnify the Seller against :-
- (i) any death, injury, damage or loss which may be caused to the Seller or the Sellers' employees or independent contractors or their respective property in connection with the delivery of the Goods on the Purchaser's site whether the same arises from any act, neglect or default of the Purchaser or the Purchaser's employees or independent contractors or howsoever arising or caused; and
 - (ii) any liability hereunder and all claims, actions or proceedings brought against the Seller or the Sellers' employees in relation to the Goods or in any way connected herewith whether such claim action or legal proceedings arise from or as a result of the negligence of the Seller or the Seller's employees or independent contractors, or howsoever arising or caused.
 - (iii) any liability hereunder and all claims, actions or proceedings brought against the Seller or the Sellers' employees in relation to the Goods if the Customer sells the goods for uses which are contrary to any guidelines issued by the Seller from time to time.
- 8.8 The Purchaser shall be responsible for the Goods being suitable in every way for the purpose for which they intend to use them and no warranty condition or representation is given by the Seller as to the fitness of the Goods for any particular purpose.
- 8.9 If the Goods are not fit for purpose under clause 8.8, the Purchaser shall indemnify the Seller against all claims, actions or proceedings brought against the Seller or the Sellers' employees in relation to the Goods or in any way connected herewith as a result of any miss-use of the Goods caused by the negligence of the Purchaser.
- 8.10 The Purchaser should insure against any risk not accepted by the Seller hereunder and particularly ensure that such policy covers any additional value in excess of that referred to in clause 8.6.

- 8.11 The Sellers' prices are based on the assumption that its liabilities are as set out in this Clause and accordingly the guarantee given in clause 8.2 hereof is not assignable or valid for second hand products and together with the other liabilities accepted hereunder is given in lieu of and to the express exclusion of all other guarantees, conditions, warranties, representations and descriptions whether express or implied in any manner save where and to the extent that the law prohibits the exclusion or restriction of such liability.
- 8.12 Subject to clause 8.13 hereof where the Purchaser "deals as a consumer" in relation to the Seller as defined by the Unfair Contract Terms Act 1977 (or any statutory modification or re-enactment thereof) clauses 8.4 to 8.11 hereof shall not apply.
- 8.13 Clauses 8.1, 8.2, 8.3, 8.4, 8.11 and 8.12 hereof shall not apply to Contracts with a Purchaser situated outside the UK or with a Purchaser in respect of whom the Unfair Contract Terms Act 1977 (or any statutory modification or re-enactment thereof) does not apply.

9. ENTIRE AGREEMENT

- 9.1 These conditions represent the entire agreement between the Purchaser and the Seller relating to the purchase of the Goods and/or the Services and supersede all prior agreements, arrangements and undertakings between the Purchaser and the Seller relating to the Goods and/or Services.
- 9.2 Each party acknowledges that in entering this agreement it does not rely on, and 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.
- 9.3 Each party agrees that it will have no claim for innocent or negligent misrepresentation, or negligent misstatement based on any statement in this agreement.

10. INTELLECTUAL PROPERTY

The Purchaser acknowledges that the Seller owns registered and unregistered rights in inter alia the LOADHOG and HOGMARK trademarks and all other intellectual property in the Goods and marketing materials supplied in connection with the Goods. The Purchaser shall use all registered and unregistered trademarks of the Seller (the Trade Mark(s)) in accordance with any brand guidelines issued by the Seller from time to time. The Purchaser shall not acquire any rights in or seek to use or register any identical or similar Trade Mark or domain name incorporating any of the Seller's Trade Marks. The Purchaser shall not use the Seller's Trade Marks in any website source code or acquire or seek to acquire any other intellectual property in the Goods.

11. WAIVER

Failure by the Seller at any time to enforce any of the provisions of these General Conditions shall not be construed as waiver by the Seller of such provisions or in any way affect the validity of these General Conditions.

12. ASSIGNABILITY AND SUB-CONTRACTING

- 12.1 This contract may not be assigned or transferred by the Purchaser without the prior written consent of the Seller.
- 12.2 The Seller may sub-contract any of its obligations under the Contract

13. NOTICE

Any notice required to be served hereunder must be served in writing by registered post to the registered

Terms & Conditions



RETURNABLE PACKAGING

office or principal place of business of the party to be served.

14. LAW AND JURISDICTION

These Terms and Conditions and any contracts to which they apply and the interpretation thereof shall be governed in all respects by the Law of England and the venue for proceedings shall be the English Courts.

15. THIRD PARTIES

No person other than a party to this agreement shall have any rights to enforce any term of this agreement and shall have no right under the Contracts (Rights of Third Parties) Act 1999 (UK) or other substantively similar legislation, to enforce any of its terms.

16. LANGUAGE

If these Terms and Conditions are translated into another language any disputes shall be governed by this English language text.

17. VARIATION

The Seller may unilaterally vary these Terms and Conditions from time to time. Such variations will only apply to orders placed after the Seller notifies the Purchaser of the variation.

18. AGREEMENT

I/We the Purchaser have noted and accept these Terms and Conditions in particular the items relating to the terms of payment and retention of title and property in all Goods supplied until all monies outstanding under any sale contract have been received by the Seller by way of cleared funds.

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