

J. J. SMITH AND COMPANY (WOODWORKING MACHINERY) LIMITED
CONDITIONS OF SALE

DEFINITIONS

1. In these Conditions "the Company" means J. J. Smith and Company (Woodworking Machinery) Limited and "the Customer" means the party buying goods from the Company.

VALIDITY OF QUOTATIONS

2. Quotations are only submitted and orders are only accepted subject to the conditions hereinafter set out. All prices quoted are exclusive of value added tax and quotations remain open for acceptance for a period of thirty days from the date hereof.

VALIDITY OF CONDITIONS OF SALE

3. Unless otherwise expressly agreed in writing by a Director of the Company every sale of goods by the Seller should be subject of these conditions to the exclusion of any other terms whether contained in any earlier set of conditions issued by the Company in a form or order or any other document issued by the Customer whether expressly or by implication. Save as aforesaid no concession or waiver made by the Company at any time shall affect the conditions or prejudice the rights and liabilities of the Company and the customer.

VAT.

4. If the invoice in respect of this order is or becomes liable to value added tax then such tax will be added to the invoice in accordance with United Kingdom Legislation.

AGREEMENTS IN WRITING

5. Unless and until an agreement has been confirmed in writing by the Company it shall not be binding on the Company.

LICENCES

6. Where the Customer requires goods to be delivered outside the United Kingdom the Customer will be responsible for obtaining all consents and licences which are necessary to enable it to import and use the goods and for all necessary consents (including exchange control consent) to enable it to make payment for the goods.

DELIVERY

7. (a) Any delivery date given by the Company is an estimate only. Whilst the Company will use all reasonable endeavours to comply with such estimates, the Company shall not be liable for any delay in delivery whatsoever whether caused by its own default or otherwise.

(b) Delivery of the goods shall be made at the Customers nominated premises by a carrier nominated by the Company or, if agreed by the Customer, at the Company's premises at any time after the Company has notified the Customer that the goods are ready for collection.

(c) The cost of collecting the goods from the Company's premises and delivering them to the Customer or to its order shall be paid by the Customer;

(d) If the Company has expressly agreed in writing that the Customer may make its own arrangements for taking delivery of the goods at the premises of the Company the Customer must take delivery of all goods subject of the contract within 14 days of being notified in writing by the Company that the goods are ready and available for collection at its premises.

(e) If the Customer fails to take delivery of the goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by a reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company the Company may:

(i) Store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance) and storage; or

(ii) sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

GUARANTEES

8. (a) New goods manufactured by the Company.

If, upon an examination carried out at the premises of the Customer within the period of 6 months commencing with the date when the goods were dispatched for delivery to the Customer or to its order, the Company finds the goods are defective by reason of (1) the faulty workmanship of the Company, (2) faulty materials supplied by the Company (excluding bearings and electrical components which shall be replaced at the Customer's expense), the Company will repair or replace the goods free of charge or refund the purchase price at the companies discretion.

(b) Secondhand and Reconditioned Goods supplied by the Company to the Customer. The Company has inspected the goods and fully stripped them down. Any parts found to be defective have been replaced, repaired or renewed at the discretion of the Company. The goods have been re-assembled, repaired and tested where practicable. If upon an examination carried out at the premises of the Customer within a period of 6 months commencing with the date when the goods were dispatched for delivery to the Customer or to its order, the Company finds that the goods are defective by reason of (1) faulty workmanship of the Company (2) faulty materials supplied by the Company (excluding bearings and electrical components which shall be replaced at the Customer's expense) then the Company will supply repaired or renewed parts free of charge. All labour charges are to be paid by the Customer".

(c) Customer to comply with instructions issued by the Company and Manufacturer. It shall be a condition of the guarantee contained in sub-clause (A) and (B) above that the Customer shall have complied with any instructions issued by the Company and the Manufacturer of the goods concerning the erection, fixing, use and maintenance of the goods. The Customer shall not interfere with or attempt to repair the goods in any way following the discovery of the alleged defect

(d) Imported Goods manufactured other than by the Company,

(i) New Goods manufactured in the United Kingdom other than by the Company,

(ii) Imported Goods.

(iii) Goods in respect of which the Company acts as a Factor. The Company gives no guarantee in respect of such goods but shall assign to the Customer any rights which it may have. The rights of the Customer shall be limited to the acceptance of any guarantee issued by the manufacturer of the goods to a purchaser thereof.

(E) Goods sold as purchased by the Company. The Company gives no guarantee in respect of goods which are offered for sale "as seen" or "as purchased by us" or other

similar expression. The Customer shall be deemed to have inspected the goods thoroughly and to be satisfied that the goods are in every way suitable for the purpose for which they are required by the Customer.

(F) Goods sold as "cleaned and checked". The Company has inspected the goods and repaired or renewed any defective parts. The goods have been test run where practicable. Whilst the Company warrants that the goods have been stored in reasonable conditions it does not guarantee that the goods themselves have remained in a reasonable condition since the date of inspection. The Customer shall have the right to examine the goods, but should it fail to exercise such right it shall be deemed to have inspected the goods thoroughly and to be satisfied that the goods are in every way suitable for the purpose for which they are required by the Customer".

DISCLAIMER OF WARRANTIES AND LIMITATIONS OF REMEDIES

9. (a) Except as provided in Section 12 of the Sale of Goods Act 1979 and Condition 8 and sub-conditions (b) and (c) below

(i) Other than the warranties contained in these terms and conditions, the company makes no warranties, express or implied, with respect to the product. Any implied warranty of merchantable quality or fitness for a particular purpose which exceeds the provisions of the terms and conditions is hereby disclaimed by the company. It is expressly agreed that the remedy provided in the terms and conditions shall be to the exclusion of all others, and that the company shall in no event be liable for any consequential or incidental damages arising from this sale.

(ii) The company makes no other express or implied warranty of fitness or merchantable quality or any other express or implied warranty. In no case shall the company be liable for consequential, special, or indirect damages resulting from the use or handling of this product. The company offers this product, and the customer and user accept it, subject to the forgoing conditions of sale and warranty, which may be varied only by agreement in writing signed by a duly authorised representative of the company.

(iii) Except as stated herein, the company specifically disclaims any and all other warranties, expressed or implied, including but not limited to the implied warranties of merchantable quality or fitness for a particular purpose.

(b) Nothing contained in these Conditions shall be construed as an attempt to exclude or limit the liability of the Company for the death of or personal injury to any person caused by its negligence or the negligence of anyone for whom it is vicariously liable.

(c) The foregoing provisions of this Condition shall not apply to sales which are made to persons who deal as consumers (as that expression is defined in Section 12 of the Unfair Contract Terms Act 1977) unless the contract is an international supply contract (as defined in Section 26 of that Act).

RETURNS

10. Where any goods are to be returned pursuant to Condition 8 they should be returned using a courier nominated by the Customer and approved by the Company. Receipt will only be acknowledged by signature of an authorised employee of the Company. Any failure to obtain the requisite acknowledgement shall result in the Customer forfeiting its right to repair, replacement or reimbursement for the defective goods.

INSTALLATION

11. (a) Erection or installation of the goods at the Customer's premises shall be at the Customer's cost and unless otherwise specified does not form part of the contract. If the Customer erects and installs the goods, then the Customer does do at its risk.

(b) The Company shall not be responsible for any damage due to faulty erection or for any failure to reach any performance specification unless the goods are erected and commissioned by the Company's own employees.

(c) The Customer will make all necessary facilities available and provide such assistance as necessary to enable an erection or installation of the goods to be completed.

(d) If the erection or installation of the goods is delayed due to the Customer's instructions or lack of instructions or due to any lack of facilities the Customer shall bear all the original costs and expenses incurred by the Company.

(e) Where the Company has contracted to undertake the erection or installation of the goods at the Customer's premises the Company will supply at least one engineer. The Customer will supply one assistant to assist each engineer who shall be suitably qualified together with such further assistance and apparatus as the Customer may be called upon to provide. Any assistant so provided by the Customer shall remain in the Customer's employment who will be responsible for all claims arising directly or indirectly out of the erection or installation of the goods.

(f) Where erection or installation of the goods is expressly included in the price the Customer will pay the engineers' fares, time (including travelling time), over time premiums, accommodation and subsistence expenses as applicable.

(g) The Company's liability for direct damage or injury to the Customer's person or property or that of others arising due to the Company's own negligence or that of its employees or subcontracts in connection with the erection or installation of the goods (but not otherwise) shall (subject to Condition 9 (a)) not exceed £500,000 in total and that the Company shall not in any event (subject to Condition 9 (b)) be liable for loss of profit indirect or consequential loss or damage of any kind as however arising.

SAFETY

12. The Customer shall, in compliance with all applicable laws, ensure that the goods are operated properly and in accordance with the Company's (or where appropriate relevant manufacturer's) instructions by suitably qualified/experienced persons only.

FORCE MAEJEURE

13. (a) The Company shall not be liable for any loss, delay, damage or expense whatsoever due to any cause beyond its control including (without prejudice to the generality of the foregoing expression) acts of government including any regulations of the European Economic Community, acts of war, civil war, strikes, lockouts, labour disputes, riots, civil commotion, fire, lightning, aircraft, explosion, flooding, act of God, force maejeure, illegality, breakdown, accident, theft.

(b) If such period of delay extends beyond a period of 3 months then the Company shall in its absolute discretion be entitled to withhold, suspend or cancel all or in part the delivery of any of the goods. The Customer should be liable to pay:

(i) In respect of the goods already delivered and not paid for such amounts as may be determined by the Company to be a rateable proportion of the total contract price;

(ii) The cost of manufacturing or adapting to the Customer's design or specification of any goods already manufactured or adapted for which there is no other market readily available to the Company at contract price.

(c) A written certificate from the Company showing that rateable proportion being conclusive evidence to the amount of such proportion.

EXCHANGE RATES

14. (a) Unless otherwise specifically stated in writing the prices quoted by the Company are Ex United Kingdom warehouse.

(b) The price quoted for goods manufactured or purchased outside the United Kingdom is based upon the rate of exchange prevailing at the date of the quotation. The invoice sent by the Company to the Customer may contain a provision for any alteration in the rate of exchange which has taken place between the date of the quotation and the date of the invoice. In these circumstances if the alteration in the rate of exchange has caused the goods to become more expensive the Customer shall pay the additional sum attributable to such alteration in the rate of exchange; if the alteration in the rate of exchange has caused the goods to become less

expensive the Company shall allow a corresponding reduction in the price of the goods.

(c) The Company shall be entitled to increase the price of the goods between the date of the Contract and the date of delivery by reason of the imposition of or any increase in customs excise or other duties or taxes or in the cost of raw materials or labour scarcity of labour or any other cause whatsoever. In such a case the price of any goods which have not yet been delivered shall be increased to take full account thereof as and from the day when written notice of such imposition or increase shall be given by the Company to the Customer provided that if such imposition or increase is equal to or is more than 10% of the total original Contract price the Customer may cancel the Contract so far as it relates to goods which have not been delivered at the date of such written notice by giving written notice of cancellation to the Company so as to reach the Company not later than fourteen days thereafter.

PAYMENT TERMS

15. The terms of payment unless otherwise specifically agreed in writing are cash as follows:

(a) The Customer shall, on placing an order for goods, pay to the Company a non refundable deposit representing 30% of the purchase price thereof.

(b) The Customer shall, on being notified by the Company that the goods are ready for delivery, pay to the Company a sum representing 70% of the purchase price thereof;

INDEMNITY

16. The Customer shall fully and completely indemnify the Company and any officer, employee, agent or representative of the Company in respect of all claims (including but not limited to those in which negligence or breach of statutory duty is alleged against the Company its servants or agents) for any death or injury to any person or damage to any property or any other loss whatsoever caused by arising out of or in connection with the design, manufacture, erection, installation or use of any goods designed, manufactured, imported, erected, installed or supplied by the Company or upon which the Company has carried out work and in respect of costs and charges connected with any such claims.

LATE PAYMENT

17. (a) The Company shall be entitled to charge interest at the rate of 5% per annum above the National Westminster Bank P.L.C. base rate in force at the date when the invoice is sent to the Customer on all overdue payments under or arising from any transaction, sale or other account whatsoever (including the price of any goods of which the Customer has failed to take delivery until the date when they were actually delivered to the Customer or otherwise disposed of).

(b) The Company shall be entitled to suspend or cancel deliveries of goods under this and any other Contract made between the Company and the Customer: -

(i) If any payment whatsoever is overdue

or

(ii) If the Customer has failed to take delivery of any goods;

(c) For the purpose of this condition time of the receipt of payment by the Company shall be of the essence of the Contract;

(d) The Customer shall make all payments for goods without any deduction whether by way of set-off, counterclaim or otherwise unless such deduction has been agreed in advance with the Company or the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

TRANSFER OF RISK

18. All goods cease to be at the risk of the Company when the Customer is notified that they are ready for collection from the Company's premises or (if no such notification is given) when the goods leave the Company's premises; thereafter all goods shall be at the risk of the Customer, who shall insure such goods to their full value to the satisfaction of the Company. When goods are dispatched direct to the Customer from somewhere other than the premises of the Company the goods shall be at the risk of the Customer from the moment of despatch. For the avoidance of doubt the Company shall not be liable if any goods which have been dispatched are damaged whilst in transit or are not delivered.

RETENTION OF TITLE

19. (a) The title in all goods delivered by the Company will remain vested in the Company and shall not pass to the Customer until the Customer has paid in full to the Company all sums owing by the Customer to the Company under or arising from any contract transaction sale or account whatsoever;

(b) Until payment has been made in accordance with (a) above:-

(i) The Customer will so keep the goods that they are identified as the property of the Company;

(ii) The Customer shall not exchange or barter the goods or the final product in any way whatsoever;

(iii) The Customer and not the Company shall be liable for any breach of Contract, warranty or misrepresentation made by the Customer in the course of any sale and the Customer shall keep the Company fully and completely indemnified in respect thereof;

(iv) Upon request the Customer shall assign forthwith to the Company if necessary by Deed of Assignment the benefit of any agreement whether written or oral under which the goods and/or the final product have been sold including but not limited to any claim for the sale price thereof. Upon such assignment the Company shall be entitled to pursue any remedy open to the Customer and shall be entitled to retain any sum or property recovered as payment for any sum owing to the Company by the Customer;

(v) The Customer shall return any goods title to which remains with the Company on request at any time by the Company and in default the Company shall be entitled to enter upon the Customer's premises and take possession of any goods supplied to the Customer by the Company and/or the final product.

(c) Upon the happening of any act whatsoever or the commencement of any proceedings which could lead to the bankruptcy liquidation or the appointment of a receiver or manager of the Customer all sums in respect of goods delivered by the Company to the Customer or arising from or under any transaction sale or account whatsoever shall become due immediately.

(d) Nothing in this Condition 18 shall change the Customer's obligation to pay for the goods.

TRADE MARKS

20. The Customer shall not use in relation to any other goods of any description whatsoever the registered trade marks of the Company or which the Company is entitled to use as agent for any other Company or any other trade marks registered from time to time by the Company or by any of its subsidiary companies and applied by the Company or any such subsidiary company to the goods.

21. The Customer shall be solely responsible for the consequences of any patent trade mark design or copyright infringement or any other infringement of a third party's rights resulting from the Customer's use or sale of any of the goods produced to the Customer's specification or as a result of any modification made by the Customer, and the Customer shall fully and completely indemnify the Company in respect of all damages costs and expenses for which the Company may be liable as a result of any such infringement or alleged infringement.

SEPARATE CONTRACT

22. Every delivery of a quantity of goods under this Contract shall be deemed to constitute a separate Contract to which the Conditions hereof shall apply. This Condition shall be additional to and in no way affect the Company's rights under Condition 13 above or 19 above to suspend or terminate the whole Contract in the circumstances therein mentioned.

INSOLVENCY

23. If the Customer shall make default in or commit a breach of this Contract or of any other of his obligations to the Company or if any distress or execution shall be levied upon the Customer's property or assets or if the Customer shall make an offer to make an arrangement or composition with his creditors or commit an act of bankruptcy or if any petition or receiving order shall be presented or made against him or if the Customer shall be a limited company and any petition or resolution to wind up such company (otherwise than for the purpose of reconstruction or amalgamation shall be passed or presented or if a receiver of such company's undertaking property assets or any part thereof shall have been appointed the Company shall have the right forthwith to determine any Contract then subsisting and upon written notice of any such determination being given to the Customer any such Contract shall be deemed to be terminated without prejudice to any claim or right the Company might make or exercise.

24. (a) Any notice required to be given under these conditions shall be addressed:-

(i) To the Customer (if a company) at its registered office or (if not a company) at the Customer's address shown on the contract or invoice or any substitute address properly notified by the Customer to the Company; or

(ii) To the Company at its registered office marked for the attention of the Company Secretary.

(b) Any notice required to be given or sent under these conditions must be given or served either:-

(a) By letter, leaving it or sending it by first class post in a pre-paid envelope and a notice so given or served shall be deemed to have been given or served;

(i) On the day it was so left or on the day following that on which it was posted in the case of a notice from the Company or in the case of a notice from the Customer if the address of the Customer is within the United Kingdom; or

(ii) Within 7 days of the date of posting otherwise; or

(b) By telex, cable, facsimile transmission and a notice so given or served shall be deemed to have been given or served within 24 hours of transmission.

ARBITRATION

25. Any dispute arising out of or in connection with the contract shall be referred to and finally resolved by arbitration under the Rules of the Chartered Institute of Arbitrators which Rules are deemed to be incorporated by reference into this clause. Each case will first be referred to a Conciliator appointed by the Institute. If conciliation is not satisfactorily concluded within six weeks, the Institute will appoint an Arbitrator who will make a final and binding award. The place of arbitration shall be Liverpool. The proper law of contract shall be English law.

EXPORT TERMS

26. (a) In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

(b) Where the goods are supplied for export from the United Kingdom the provisions of clause 1 shall (subject to any special terms agreed in writing between the Customer and the Company) apply despite any other provisions of these Conditions.

(c) The Customer shall immediately obtain all import licences (or equivalent authorisation) necessary for the importation of the goods into the country to which they are to be consigned and shall promptly inform the Company of their grant.

(d) Delivery shall be effected:

(i) In the case of FCA by the Company delivering the Goods on board in the manner customary at the port of shipment selected by the Company (but the Company shall not be required to give the Customer any notice relating to insurance) and the goods shall at that time be deemed to be delivered in accordance with the contract;

(ii) In the case of the CIF by the Company loading the Goods on board a vessel for conveyance to the port of destination specified in the contract and tendering to the Customer on his agenda as soon as reasonably possible after shipment the bill of lading insurance policy or certificate and invoice relating to shipment. Delivery in accordance with the contract shall be deemed to be effected at the same time of such loading on board.

(e) The Company shall not be responsible for any loss or damage to the goods after the same have been delivered.

(f) The Company shall be responsible for arranging for testing and inspection of the goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

(g) All orders accepted by the Company will specify that the price is CIF or FCA. Unless otherwise specified by the Company in writing, all prices quoted are exclusive of VAT, customs duties, import service. All prices quoted are subject to variations without notice.

(h) Unless otherwise agreed the price for the Goods to be supplied by the Company specified in the tender document and is payable in cash in sterling.

(i) In relation to prices specified in a currency other than sterling ("the Quoted Currency"), and unless otherwise agreed in writing by the Company, the Company shall have the right at any time or times when the rate in the London Foreign Exchange market for the Quoted Currency in terms of sterling stands more than 5% higher than such rate on the date when the price was quoted, to raise any such prices by a percentage not exceeding the percentage rise in such rate for Quoted Currency and shall forthwith notify the Customer of such increase price which shall then be substituted for the original price.

(j) Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank acceptable to the Company or if the Company has agreed in writing on or before acceptance of the Customer's order to waive this requirement by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customers payable at sight to the order to the Company at such branch of National Westminster Bank PLC in England as may be specified in the bill of exchange.

(k) The Customer undertakes not to offer the goods for resale in any country notified by the Company to the Customer at or before the time the Customer's order is placed (such country will not be a member of the B.C.) or to sell the goods to any person if the Customer knows or has reason to believe that that person intends to resell the goods in any such country.

ENFORCEMENT

27. If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these Conditions and the remainder of the provision in question shall not be affected by such decisions.