

Terms and Conditions of Sale

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions these words have the following meaning:-
‘the Company’ Whittan Industrial Ltd trading through its division, Link International, or such other company within the Whittan Group of Companies as may be responsible for the supply of Goods and/or Services.
‘Consumer Protection Act’ the Consumer Protection Act 1987 or any similar legislation in any other country.
‘Consumer Contract’ a Contract with a Customer who neither makes the Contract in the course of a business or holds himself out as doing so.
‘the Contract’ any contract under which the Company sells Goods and/or provides Services to the Customer.
‘the Customer’ the individual, firm, company or other party with whom the Company contracts.
‘Goods’ the whole or any part of the materials, equipment or other goods which the Company is to supply.
‘Services’ the whole or any part of the services which the Company is to supply or carry out including (without prejudice to the generality of the foregoing) all, design, manufacture, testing, repairs, supervisory services and works of erection or installation on site.
‘supply’ includes (but is not limited to) any supply under a contract for sale
‘International Supply Contract’ such a contract as is described in Section 26(3) of the Unfair Contract Terms Act 1977. S.E.M.A. the United Kingdom Storage Equipment Manufacturers Association.

2. CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS

- 2.1 No order in pursuance of a quotation, via the Company's web-site or otherwise shall be binding on the Company unless and until such order is accepted in writing by the Company (including written acknowledgments sent by electronic means). Quotations may be subject to a site survey being made by the Company's technical staff and the Company may need to amend any designs following a site survey, following consultation with the Customer. Subject to the Customer's prior agreement any extra costs or expenses arising from such amendments shall be the responsibility of and paid for by the Customer and shall be added to the Contract price.
2.2 The Contract will be subject to these Conditions The Company will not be bound by any term or representation inconsistent with these Conditions unless otherwise agreed in writing and signed by an authorised signatory of the Company. A list of authorised signatories is available from the Company upon request. This clause 2.1 shall not apply to Consumer Contracts. Unless otherwise agreed in writing by the Company these Conditions will override any terms or conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.
2.3 Any illustrations, weights, measures, temperatures, capacities, descriptions, performance schedules or specifications contained in the Company's catalogues, samples, price lists or other advertising or sales material are intended merely to present a general picture of the Goods and/or Services and will not form a representation or be part of the Contract unless otherwise agreed in writing by the Company.
2.4 Where the Company has not acknowledged the Customer's order in writing, these conditions will apply to the Contract provided the Customer has had prior notice of them.
2.5 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time, and shall not be bound by any obvious errors appearing on its web-site.
2.6 The company accepts no responsibility to ensure that the premises upon which goods are to be installed are adequate to withstand the loads imposed and the customer is deemed to warrant that the structural and other parts of the premises are in such strong and fit condition that the services can be carried out safely and are suitable for the company's goods and services and for carrying the loads distributed.
2.7 In the case of Goods not manufactured or designed by the Company the Company gives no warranty that the sale or use of the Goods will not infringe the intellectual property rights of any third party.
- ### 3. CUSTOMER'S SPECIFICATION AND LIABILITY
- 3.1 If Goods are made or Services carried out to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer then:
3.1.1 the suitability and accuracy of that specification, instruction or design will be the Customer's responsibility; and
3.1.2 (save for Consumer Contracts) the Customer will indemnify the Company against any infringement of any intellectual property right and any loss, damage or expense it may incur because of any such infringement or alleged infringement in any country; and
3.1.3 (save for Consumer Contracts) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising under the Consumer Protection Acts by reason of the specification or design of the Goods and/or Services; and subject to the customers agreement, the company may make changes to the specification, which do not materially affect the quality or performance of the goods and/or Services.

4. PRICES

- 4.1 The Company's quotations for the Goods and/or Services are provisional and may be altered at any time prior to acceptance of the Customer's order.
4.2 Prices charged will be those current at the time of delivery of the Goods, or completion of the Services. The Company may increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying the Goods and/or Services. However, a Customer in a Consumer Contract may cancel the Contract without penalty if he/she does not agree to such an increase. The Company may, (subject to the Customer's agreement in the case of Consumer Contracts), increase its prices at any time to take account of any error or inadequacy in any specification, instruction or design provided by the Customer or any modification carried out by the Company at the Customer's request or for work to be carried out other than during the normal working hours of the Company.
4.3 All prices quoted are exclusive of VAT. The Customer shall pay VAT and all other relevant duties or taxes in respect of the Goods and/or Services.

5. PAYMENT

- 5.1 Subject to sub-clause 5.2, the Customer shall pay all invoices received from the Company in respect of Goods delivered or Services performed not later than thirty days from the date of the relevant invoice, provided that if the Company and the Customer shall have agreed a Schedule for the payment of interim and final payments the Customer shall make payment in accordance with such Schedule. Any sums the payment of which are conditional on the issue of an Architect's Certificate shall be paid by the Customer within 14 days of the date of issue of such Certificate.
5.2 Where the Company has agreed to install Goods and has agreed in writing that payment for the Goods and/or Services or any part thereof is related to acceptance of the same by the Customer then unless otherwise agreed in writing by the Company, the use of any part of the Goods by the Customer shall constitute acceptance of that part of the Goods and the installation thereof and payment for that part of the Goods and installation shall become due in accordance with the agreed Contract terms.
5.3 Time for payment will be of the essence of the Contract notwithstanding that property in the Goods has not passed to the Customer.
5.4 Non-payment on a due date will entitle the Company to demand payment of all outstanding balances whether due or not and/or cancel all outstanding orders without prejudice to any other rights it may have.
5.5 The Customer will not be entitled to withhold payment of any invoice by reason of any right of set-off or any claim or dispute with the Company unless such right or claim is agreed by the Company in writing. This clause shall not apply to Consumer Contracts.
5.6 Without prejudice to any other rights it may have the Company will have the right to suspend performance of its obligations if it reasonably believes that the Customer will not make payment in accordance with this clause.

6. DELIVERY AND/OR COMPLETION OF SERVICES

- 6.1 The Company will only deliver Goods or perform Services within mainland United Kingdom (which, without limitation, shall exclude the Channel Islands, Isle of Man, Orkney, and Shetland). The Customer will take delivery of the Goods at the nearest convenient unloading point to the Customer's works or appropriate site and the Customer shall be responsible for notifying the Company of any restriction of access such as weight, width, height or unloading hours. The Company shall have the sole right to determine the relevant unloading point. The Customer will give the Company all necessary instructions for delivery upon the Company's request and, save for Consumer Contracts, the customer will be responsible for any costs arising due to its delay in doing so and shall bear the risk and expense of off-loading.
6.2 Save for Consumer Contracts, (the Company will be entitled to add a reasonable charge for delivery to the Contract Price).
6.3 If the Contract is an International Supply Contract, it will be deemed to incorporate the latest edition of 'Incoterms' current at the date of the Contract and the Goods will be delivered on a [Free Carrier (FCA) Ex Works (EXW)] basis, if there is any inconsistency between 'Incoterms' and any express term of the Contract the latter will prevail. The Company will be under no obligation to give the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979.
6.4 The Company will try to deliver the Goods or complete the Services by any agreed date or within any agreed period. Such dates or periods are estimates only given in good faith and the Company will not be liable for any failure to deliver or complete by such dates or within such periods. Time for delivery will also be conditional upon receipt of final instructions for delivery being received promptly and all necessary information or approvals by the Customer being provided forthwith upon request. The Goods may be delivered by the Company in advance of any agreed date upon giving reasonable notice to the Customer. [Dates quoted for delivery of orders not requiring installation by the Company refer to dates upon which Goods are ready for despatch but dates for delivery of orders requiring installation refer to dates upon which Goods will arrive on site.]
6.5 If the Company is delayed in or prevented from delivering the Goods or carrying out the Services due to any cause beyond the reasonable control of the Company, the Company may cancel or suspend the Customer's order without incurring any liability for loss or damage.
6.6 The company will try to comply with reasonable requests by the Customer for postponement of delivery but shall not be under any obligation to do so. Unless otherwise agreed in writing by the Company any packaging is intended to provide adequate protection only throughout normal conditions of transit of usual duration.

7. CANCELLATION OR DEFERMENT

- 7.1 The Company may defer any deliveries of Goods or performance of Services or treat the Contract as determined if the Customer fails to make any payment when it becomes due, or enters into any composition or arrangement with its creditors or has a winding-up order made against it or has an administrative receiver or administrator appointed or passes a resolution for winding-up or a Court makes an order to that effect or if the Customer breaches any of these Conditions.
7.2 Clause 7.1 is without prejudice to the Company's right to the full purchase price for the Goods and/or Services and (save in the case of Consumer Contracts) damages for any loss suffered in consequence of the determination of the Contract.
7.3 Cancellation by the Customer will only be accepted at the discretion of the Company [unless, in the case of a Consumer Contract, the Company commits a material breach of the Contract.] Acceptance of the cancellation will only be binding on the Company if in writing and signed by a director. Save for Consumer Contracts, any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting from the cancellation will be paid by the Customer to the Company forthwith.

8. SHORTAGES AND DEFECTIVE GOODS AND/OR SERVICES - LIMITATION OF LIABILITY

- 8.1 The Customer will notify the Company of any damage to or loss or shortage of the Goods within three days of receipt or (in the case of total loss) of receipt of the invoice or other notification of despatch and (where applicable) will simultaneously provide authority for the Company's servants or agents to inspect any damaged Goods. Save as otherwise provided in this clause 8, the Company's liability, if any, will be limited to replacing or (at its option) repairing such Goods and the Company will have no liability for any consequential loss arising out of such damage, loss or shortage.

- 8.2 Save as otherwise provided in this clause 8, the company's liability in respect of any defect in or failure of goods supplied or default in any Services supplied or in respect of breach of any representation or warranty given by the company herein is limited to replacing or (at its option) repairing or paying for the repair or replacement of goods which are found to be defective by reason of faulty or incorrect design, workmanship, parts or materials and carrying out again any Services which it has failed to perform properly in accordance with the contract.
8.3 Save as otherwise provided in this clause 8, the company's liability for any direct loss or damage sustained by the customer as a result of any error in any weight, dimension, capacity, performance or other description or information which has formed a representation or is part of the contract will not exceed the price of the goods and/or services in respect of which the description or information is incorrect
8.4 The company will only be liable to the customer in respect of the matters set out in clauses 8.2 and 8.3 provided that 8.4.1 the customer informs the company of the defect or default as soon as is reasonably practicable and in any event the defect or default is notified to the company within twelve months of the delivery of the goods or completion of the services; and
8.4.2 authority is provided for the company's servants or agents to inspect the same prior to any remedial work being carried out; and
8.4.3 the goods are not moved from the position in which they have been installed.
8.5 Save as otherwise provided in this clause 8, the company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the customer arising from or in connection with any such defect default or error as aforesaid.
8.6 Where the company agrees to repair or replace goods or carry out services again any time specified for delivery or performance under the contract will be extended for such period as the company may reasonably require.
8.7 Except for the terms implied in the contract by section 12 of the Sale of Goods Act 1979 (and, in respect of Consumer Contracts, sections 13, 14 and 15 thereof) or section 2 of the Supply of Goods and Services Act 1982, all warranties and other terms implied by statute or otherwise, are (unless it is unlawful to exclude the same) expressly excluded, save insofar as they are contained in these conditions or otherwise expressly agreed by the company in writing.
8.8 Except in respect of death or personal injury and save as otherwise provided in this clause 8 the company shall not be liable to the customer for any damage or for any direct or consequential loss (including any loss of goodwill, loss of business or loss of profits, whether or not such loss could have been reasonably anticipated by the Company) incurred by the customer in consequence of any negligence on the part of the company or negligence or willful default on the part of its servants or agents in or in connection with the supply of any goods or in the carrying out of any Services or in the preparation or provision of any information or advice
8.9 Where a Contract is a Consumer Contract, the limitations of liability in clauses 8.1, 8.2, 8.3, 8.5 and 8.8 shall not apply and the Customer's statutory rights shall not be affected.
- ### 9. RETENTION OF TITLE
- The following provisions shall apply to all contracts relating to Goods [except for Consumer Contracts]. No termination of the Contract shall prejudice limit or extinguish the Company's rights under this clause.
9.1 Upon delivery of the Goods they shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price of all Goods and Services supplied under the Contract and under any other contract between the Company and the Customer. Until such time the Company shall be entitled to recover the Goods or any part thereof and for the purpose of exercising such rights the Company its employees and agents with appropriate transport may enter upon any location where the Goods are situated.
9.2 The Customer is hereby granted a licence by the Company to incorporate the Goods in any other products, subject to any other consents that may be required from any third party.
9.3 [and to sell on the Goods and any products incorporating any of them.
9.4 The Customer shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the Goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been remitted shall hold such amount as trustee and agent for the Company.
9.5 The licences granted under sub-paragraph 9.2 above or either of them shall be terminable forthwith at any time upon notice by the Company to the Customer.
- ### 10. RISK IN THE GOODS
- 10.1 Except for International Supply Contracts and unless otherwise agreed in writing by the Company, the risk in the Goods will pass to the Customer on delivery or, if delivery is postponed at the Customer's request, when the Goods are ready for despatch.
- ### 11. INSTALLATION AND OTHER SERVICES
- 11.1 If under the Contract it is agreed that the installation, testing or servicing of the Goods or any other goods is to be carried out by or under the supervision of the Company, the Customer warrants that it will lay all necessary foundations and make all preparations to the site which the Company deems necessary by such date as may be specified in the Contract or as may be reasonably required by the Company; the Customer further warrants that it will provide suitable access to and possession of the site and all information and facilities required to enable the Company to perform its obligations.
11.2 The Customer will ensure that the Company's employees and agents are able to carry out their work with continuity and without hindrance and any expense incurred by the Company as a result of the Customer's failure to so ensure will be charged extra.
11.3 On completion of the Contract all surplus materials supplied by the Company shall unless otherwise agreed in writing by the Company remain the property of and be removed from the site by the Company. Until such surplus materials are removed the Customer shall take reasonable precautions for the safe custody thereof.
11.4 Save for Consumer Contracts, the Company's liability for direct damage to property caused in the course of installation, testing, servicing or repair by the negligence or willful default of the Company or its servants or agents shall not exceed the price payable under the Contract.
11.5 The Company reserves the right to sub-contract the installation of the Goods or the performance of any other Services required under the Contract.
11.6 The Customer warrants that it will at all times provide a safe working environment for the Company's employees, agents and sub-contractors and will comply with all statutory or other regulations and codes of practice in connection therewith and (save for Consumer Contracts) will indemnify the Company in respect of any loss incurred by the Company due to the Customer's breach of such warranty.
11.7 Save for Consumer Contracts, the Customer shall insure to the full value thereof and provide adequate protection for all machinery and equipment of the Company and all plant, machinery, materials and the Goods on site during the course of the installation and until removal against all loss or damage howsoever caused otherwise than by reason of neglect or default of the Company's employees or agents.
- ### 12. TESTING
- 12.1 The Company shall notify the Customer of the date on which it is or will be ready to carry out any tests agreed with the Customer. The Customer undertakes that it or its representative will attend at the premises where the Goods are situated on the date specified by the Company for the purpose of witnessing the tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and the Customer shall be bound by the results thereof.
12.2 [If the Customer wishes to test the Goods otherwise than at the Company's premises or otherwise than in the presence of the Company's employees, agents or representatives, the Customer shall first obtain written details from the Company of its recommended testing procedure for such Goods (which shall not be unreasonably withheld). The Company shall have no liability for any damage which occurs to such Goods during or as a result of such testing not being in accordance with the Company's recommended testing procedure nor from any direct or consequential damage incurred by the Customer during or as a result of such testing not being in accordance with the Company's recommended testing procedure.]
- ### 13. SAFETY
- 13.1 The Customer warrants that it will pass on to all third parties to whom it may supply the Goods or who may be affected by the use of the Goods all information as to the use and safe handling of the Goods which has been supplied with the Goods whether or not such information has been supplied by the Company.
13.2 The Company has set out in its design manuals and assembly instructions detailed information on the load bearing criteria, assembly, safe use and design application of the Goods and the Customer covenants that it will strictly adhere to the same and will not use or install the Goods where the application of the Goods is not one which the Company has approved in writing. Failure to adhere to such instructions could render the use of the goods unsafe. Any modification by the customer to the goods will change the essential characteristics thereof within the terms of the Consumer Protection Acts and the Customer will become the manufacturer thereof for the purposes of the Consumer Protection Acts.
13.3 The Customer warrants that any system supplied by the Company incorporating moving parts will be kept in good condition and working order and maintained as required by the Company's specification. Failure to do so could affect performance and safety.
13.4 The Customer will indemnify the Company against any loss, damage, claims, expenses or liabilities arising as a consequence of the Customer's failure to comply with its obligations in sub-clauses 13.1 or 13.2 or 13.3 or pursuant to the Contract or the general law.
- ### 14. DESCRIPTIONS, DRAWINGS, DATA, CONFIDENTIAL INFORMATION
- 14.1 All drawings, documents and other information supplied by or on behalf of the Company are supplied upon the express condition that the Customer will not without the prior written consent of the Company disclose or use them in any way except for the purposes of installing or operating the Goods for which they are issued.
14.2 Copyright and all other intellectual property rights in all drawings documents and other information prepared and/or supplied by the Company shall vest in and remain the property of the Company.
15. **PLANNING, PERMISSION, LICENCES, REGULATIONS, BYE-LAWS**
15.1 The Customer shall have full responsibility for compliance with (and any costs or fees relating to compliance with) any building regulations, statutory or other regulations or local bye-law affecting the siting, use, operation or construction of the Goods, and will indemnify the Company against any liability, claim, loss, penalty, costs or damage it may suffer as a result of the Customer's failure to so comply.
- ### 16. USE OF PERSONAL DATA
- 16.1 Any personal information relating to the Customer obtained by the Company from the Customer via its web site or otherwise shall be used by the Company for the purpose of fulfilling the Contract, but may also be used by the Company or any of its divisions or affiliates in order to send information to the Customer of any products or services of the Company, or any of its divisions or affiliates. The Company shall not pass such personal information to any other party unless required to do so by law.
- ### 17. GENERAL
- 17.1 These Conditions and the Contract are governed by English Law and the parties agree to submit to the jurisdiction of the English Courts in the event of any dispute.
17.2 If any provision of these Conditions is declared unlawful or unenforceable or becomes illegal or void for any reason, the validity of the remaining provisions shall not be affected.
17.3 [Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the Conditions].