

# Shawston Terms and Conditions

## SHAWSTON INTERNATIONAL LIMITED CONDITIONS OF SALE

### 1. DEFINITIONS

In these Conditions the following words shall have the following meanings:-

"Seller"	means Shawston International Limited;
"Buyer"	the business, firm, company, body or other entity to whom the Seller agrees to sell Goods in accordance with these Conditions;
"Goods"	the parts goods materials or equipment specified or referred to in the Order;
"Order"	the purchase order placed with the Seller by the Buyer;
"Contract"	any contract concluded between the Buyer and Seller subject to and in accordance with these Conditions;
"Delivery"	the delivery of the Goods by the Seller in accordance with these Conditions;
"Specification"	the technical or other description (whether as to quantity, quality, price, weight or otherwise) of the Goods, shown or referred to in the Contract and any performance schedules and/or other characteristics and details.

### 2. BASIS OF SALE

- 2.1 All contracts shall be concluded upon the basis of these conditions together with any special conditions issued by the Seller to the Buyer at any time prior to or with the Seller's acceptance of Order. Variations and/or qualifications of such conditions can only be effected by a document signed by a duly authorised officer of the Seller and setting out in full the relevant variations and qualifications.
- 2.2 No terms or conditions submitted by the Buyer to the Seller, irrespective of their date, shall prevail over these Conditions.
- 2.3 All Orders shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions and acceptance of Delivery shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into a contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

### 3. QUOTATIONS

- 3.1 Quotations are not offers and may be withdrawn or varied at any time prior to the acceptance by the Seller of the Buyer's Order but unless previously withdrawn or varied by the Seller quotations shall remain open to acceptance for 14 days (or such longer or shorter period as may have been stated, in writing, by the Seller) from the date of posting. The Seller may nevertheless elect at its option to treat as binding an acceptance received after the expiration of such period, and shall be deemed to have so elected unless and until it notifies the Buyer to the contrary.
- 3.2 Orders for the Goods shall be given by the Buyer to the Seller by electronic data transfer (using such methods as may be agreed in writing by the Seller). Any verbal Orders shall be confirmed by the Buyer in writing no more than 3 days after the Order is given by the Buyer but for the avoidance of doubt, it is agreed that verbal Orders shall upon their acceptance by the Seller be binding notwithstanding any failure of the Buyer to confirm the same in writing.

### 4. ORDERS AND SPECIFICATIONS

- 4.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including but not exclusively any relevant Specification) and for providing to the Seller any necessary information concerning the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 4.2 If the Goods are to be manufactured or processed by the Seller in accordance with a Specification and/or design submitted by the Buyer the Buyer shall indemnify the Seller from and against all costs, claims, damages and expenses made against or incurred by the Seller in connection with the settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any third party arising out of the Seller's use of such Specification.
- 4.3 The Seller expressly reserves the right (but accepts no obligation) to make such changes in the Specification of the Goods as are necessary to ensure that the Goods conform with any applicable statutory requirements and the Buyer shall not be entitled to object to or reject the Goods by reason of any such changes.
- 4.4 All descriptions, specifications, drawings and particulars of weight and dimensions submitted with the Seller's quotation (collectively referred to as "the Quotation Particulars") are approximate only and such material as is contained in the Seller's catalogues and other advertising matter is intended merely to illustrate the Goods described therein and will not form part of the Contract. The Seller reserves the right to make such reasonable changes as it considers to be necessary in the Quotation Particulars either before or during the course of the Contract provided that the Seller shall not thereby render the Goods unsuitable for the purpose for which they are intended.

### 5. PRICES

- 5.1 Prices shall be those ruling at the time of despatch and the Seller reserves the right to revise quoted prices in the event of any change in costs. Unless otherwise stated, prices quoted are for manufacture and delivery in one consignment and are subject to the addition of whatever rate of tax may be applicable at the time of invoicing.
- 5.2 The cost of any variation or modification of the Contract required by the Buyer shall, if accepted by the Seller, be borne by the Buyer.

### 6. TERMS OF PAYMENT

- 6.1 Payment shall be made not later than 30 days after the end of the month of invoicing unless otherwise expressly agreed in writing by the Seller. The Seller reserves the right to suspend, reduce and/or cancel trading arrangements offered to the Buyer, without prejudice to any other rights the Seller may have against the Buyer, in the event the Buyer defaults in such obligations to the Seller.
- 6.2 The Seller reserves its Statutory Right to apply interest and late payment compensation in accordance with the Late Payment of Commercial Debts Regulations 2002. Thereafter any Costs incurred by the Seller in recovering the amount of the invoice, whether by legal proceedings or otherwise shall be recoverable as part of the debt.
- 6.3 In the case of orders involving more than one delivery, if default is made in payment on the due date, the Seller at its option shall be entitled to treat the Contract as repudiated by the Buyer.
- 6.4 Each Contract shall be subject to the Seller being satisfied as to the Buyer's credit status, both prior to and during the period of the Contract. If the Seller becomes dissatisfied with the Buyer's credit status it may suspend performance of the Contract and any agreed rebate scheme until it is satisfied as to the Buyer's creditworthiness or is given such security for the price as the Seller shall deem appropriate.
- 6.5 All and any sums due from the Buyer to the Seller shall become immediately due and payable, regardless of any prior arrangement for payment, in the event the Seller is unable to obtain insurance in relation to such debt, or upon the Buyer's credit status not being at a level satisfactory to the Seller, or upon any other circumstance arising which may, in the Seller's sole opinion, prejudice the Seller's ability to collect payment of the debt in full.
- 6.6 If the recovery of any sums outstanding from the Buyer to the Seller is passed to a debt collection agency or legal advisor, the Buyer shall pay the Seller's costs incurred, on an indemnity basis, in instructing such debt collection agency or legal advisor and all legal and other costs ancillary thereto.

### 7. DELIVERY AND RISK

- 7.1 Delivery of the Goods shall be completed to the Buyer at the place agreed between the parties and the risk in respect of all Goods shall pass to the Buyer at the time of Delivery. If no place for Delivery is agreed, Delivery shall take place at the Seller's address immediately prior to despatch to the Buyer. If Goods are collected from the Seller's premises Delivery shall take place immediately on loading of the Goods onto the transport vehicle. Notwithstanding such Delivery, the property in and title to the Goods shall not pass to the Buyer except as provided in Clause 10 hereof.
- 7.2 The Seller shall endeavour to deliver the Goods by or within any date or period stipulated or referred to in its acceptance of Order. Any such date or period shall be approximate only however and the Seller will not be liable for whatever reason for any damage, loss, cost or expense whatsoever arising from any departure from the said date or period howsoever caused. Time for Delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted Delivery date on giving reasonable notice to the Buyer.
- 7.3 If Delivery of the Goods is prevented or delayed by reason of any industrial dispute or any other cause beyond the Seller's control then the time for Delivery shall be extended for such period as is reasonable.

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- 7.4    The Seller may effect Delivery by instalments in which case these Conditions shall apply to each instalment as though a separate Contract and any failure or defect in any one Delivery will not entitle the Buyer to repudiate the Contract as a whole.
- 7.5    If the Seller fails to deliver the Goods for any reason (other than any cause beyond the Seller's reasonable control or the Buyer's fault) and the Seller is accordingly liable to the Buyer, the Seller's liability shall be strictly limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. No claims for other and/or consequential loss or damage shall be allowed in connection with any such non-Delivery.
- 7.6    If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions prior to the time stated for Delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

(a)     store the Goods, until actual Delivery or sale (as provided in paragraph (b) hereof) and charge the Buyer for the reasonable costs (including insurance) of storage; and/or

(b)     sells the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price.

8.    **MANUFACTURE**

While every endeavour will be made to supply materials in accordance with the quality of samples submitted or quoted for, alternative materials may be submitted for those quoted, subject to the Buyer's prior approval.

9.    **SKETCHES, PROOFS AND PRINTING**

- 9.1    All sketches and original work together with the copyright therein remain the property of the Seller.
- 9.2    No responsibility will be accepted by the Seller for any errors arising from proofs which have been approved by the Buyer.
- 9.3    The Buyer shall be solely responsible for any matter which it instructs the Seller to print on the Goods.

10.   **TITLE AND RISK**

- 10.1   Risk of damage to or loss of the Goods shall pass to the Buyer:

(a)     in the case of Goods to be delivered otherwise than at the Seller's premises at the time of Delivery;

(b)     in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

and for the avoidance of any doubt if the Buyer wishes to collect the Goods from the Seller's premises outside the Seller's normal business hours the Buyer acknowledges and agrees that the Goods will be left unattended outside the Seller's premises and that risk of damage to and/or loss of the Goods in such circumstances is wholly the Buyer's responsibility and the Seller shall have no responsibility therefore whatsoever.
- 10.2   Legal ownership in and the right to dispose of the Goods shall not pass to the Buyer until the Seller has received in full all amounts payable to it by the Buyer whether under the Contract or otherwise and whether or not any such amount shall have become due hereunder and until this time the whole right title and interest both legal and equitable in and to the Goods shall remain with the Seller and the Buyer shall keep the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods properly stored, protected and insured in such a way that they are identifiable as the property of the Seller and are separate from all other goods of the Buyer.
- 10.3   Subject to the provisions of this clause 10 the Buyer shall be entitled to the use of the Goods prior to the transfer of legal ownership but shall in no circumstances be entitled to sell the Goods unless:-

(a)     it has the prior written consent of the Seller; and

(b)     where the Seller has given such written consent subject to conditions the Buyer complies with any and all such conditions.
- 10.4   Until legal ownership in the Goods is transferred as provided by this Clause 10 the Seller shall be entitled to enter the premises of the Buyer for the purpose of examining the Goods and checking compliance by the Buyer with the terms of this Clause 10 and on the occurrence of any breach by the Buyer the Seller shall, in addition to any other rights the Seller may have, be entitled to demand the Buyer deliver up the Goods to the Seller, sever the Goods from any other property of the Buyer or a third party, repossess and/or resell the Goods or any part thereof.
- 10.5   The Seller's rights contained in this Clause 10 and the exercise thereof shall be without prejudice to all other rights of the Seller and the Seller shall be entitled to maintain an action for the price of the Goods notwithstanding that the legal ownership in the Goods may not have passed to the Buyer.

11.   **QUALITY AND INSPECTION**

- 11.1   The Buyer shall immediately upon Delivery of the Goods examine them to determine their quality and quantity, and shall within 24 hours of Delivery give verbal notification and within 3 days of Delivery give notice in writing to the Seller of any claim arising from shortage of and/or damage to the materials.
- 11.2   Claims relating to the delay of and/or non-delivery of the Goods must be submitted in writing to the Seller within seven days after the proposed date of despatch of the Goods notified to the Buyer. The Seller shall not be under any liability whatsoever in respect of any claim if it shall not be so notified.
- 11.3   The Seller's liability hereunder in respect of any shortage, loss or damage shall be limited, at the option of the Seller, to: (i) repair or replacement free of charge or (ii) refund/credit of the proportion of the price attributable to the materials undelivered, lost or damaged.
- 11.4   Claims relating to any defect in the Goods which is not immediately visible on inspection must be made in writing immediately upon the Buyer learning of the defect and no later than 30 days after the Buyer's receipt of the Goods.
- 11.5   Any claim not made in accordance with the above clauses shall, to the full extent permitted by law, be deemed waived and the Seller shall not be liable to the Buyer for any resulting damage or loss.
- 11.6   The Seller shall have no liability at any time:

11.6.1   in respect of any defect in the Goods, arising from any drawing, design or specification supplied by the Buyer;

11.6.2   in respect of any defect appearing in the Goods, or any component part of the Goods which is due, or partly due, to the material of which the same is made, its design or any method of manufacture or process of treatment applied thereto by any person other than the Seller, or as specifically requested by the Buyer; or

11.6.3   in respect of any defect in the Goods arising from fair wear and tear, abnormal working conditions, misuse, maltreatment or alteration, or repair of the Goods without the Seller's approval; or

11.6.4   in respect of any alleged defect in the Goods following discovery of which the Buyer continues to use the Goods.

12.   **RIGHTS OF SET OFF**

No rights of set off shall exist in respect of any claims by the Buyer against the Seller and the Buyer shall not withhold all or any part of any sum which has become due for payment.

13.   **EXCLUSION OF LIABILITY FOR CONSEQUENTIAL LOSS**

- 13.1   The Seller shall have no liability to the Buyer for any loss, cost, expense, liability or other claim for compensation arising from any documents or other materials and any data or other information provided by the Buyer relating to the Goods or any instructions (whether written or oral) supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault (whether by act or omission or otherwise) whatsoever that is attributable to the Buyer.
- 13.2   Furthermore the Seller shall have no liability to the Buyer for any loss (including consequential loss), expense or claim whatsoever or however caused whether arising under contract, tort (including negligence) or otherwise including without limitation loss of production, loss of, or corruption to, data, loss of profits or of contracts, loss of operation time, loss of goodwill or loss of anticipated savings, even if the Buyer has advised the Seller of such a possibility.
- 13.3   The Seller accepts liability to the extent that it results from its own negligence or the negligence of its employees for death or personal injury without limit and physical damage to or loss of the Buyer's tangible property up to an amount of £1,000 in respect of each incident or series of connected incidents.
- 13.4   The Buyer agrees that except as expressly provided in this Clause 13 the Seller will not be under any liability of any kind whatever or however caused arising directly or indirectly in

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connection with the Contract.

13.5 Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of its obligations in relation to the Goods if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-

- (a) act of god, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either party or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery; and/or
- (g) power failure or breakdown in machinery.

## 14. EXCLUSION OF LIABILITY FOR QUALITY OF GOODS

14.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

14.2 The Seller does not warrant or represent that the Goods to be sold will have been manufactured or processed by the Seller. The Seller may act as principal or as undisclosed agent for any other person or company in the making or performance of the Contract for the sale of the Goods.

14.3 The Seller does not warrant that the Goods will be fit for any particular purpose intended by the Buyer.

## 15. INSOLVENCY OF BUYER

15.1 This Clause shall apply if

- (a) any distress or execution shall be levied on the Buyer's assets or if the Buyer shall make or offer to make any arrangement or composition with creditors or an administration order shall be presented or made against the Buyer or if the Buyer is a limited company and any resolution or petition to wind up the same (other than for the purposes of solvent reconstruction or amalgamation) shall be passed or served or an administration order be made or if a receiver or administrator be appointed of the Buyer's assets and undertaking or any part thereof or any other event pursuant to the Insolvency Act 1986 arises; or
- (b) the Buyer ceases or threatens to cease to carry on business; or
- (c) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer or if in the opinion of the Seller serious doubts arise as to the solvency of the Buyer.

15.2 If this Clause 15 applies, then without prejudice to any other right or remedy available to the Seller:-

- (a) the Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Buyer; and
- (b) any entitlement of the Buyer hereunder to use Goods delivered but not paid for in full shall terminate forthwith; and
- (c) the Buyer shall allow the Seller to enter any premises of the Buyer to sever the Goods from other property to repossess and to resell any Goods delivered but not paid for in full or any part thereof; and
- (d) if Goods have been delivered but not paid in full, the price therefor shall become immediately due and payable notwithstanding any agreement to the contrary reached between the Buyer and the Seller prior to any event referred to in Clause 15.1.

15.3 Without prejudice to any of the Seller's rights to claim damages the Buyer will on termination or cancellation of the Contract for any reason whatsoever or if the Buyer cancels, extends or delays or purports to cancel, extend or delay the Contract or fails to take delivery of any Goods, indemnify the Seller against all loss cost damage or expense incurred by the Seller in connection with the non performance of the Contract.

## 16. PRODUCT LIABILITY

In the event the Buyer shall vend the Goods provided by the Seller, to a third party, the Buyer shall ensure that any Third Party(s) are warned of the nature of the products. Further the Buyer shall provide any requisite information to the third party such that the Goods are transported, stored, fitted and used in accordance with any specification and/or instruction the Seller may provide. The Buyer shall indemnify the Seller from and against all costs, claims, damages and expenses made against or incurred by the Seller resulting from inappropriate/misuse of the Goods.

## 17. THIRD PARTY CONTRACTS

The Buyer shall in no way pledge the credit of the seller, nor make any representation, nor give any warranty with regard to the Seller's products other than that contained in these Terms and conditions, nor shall the Buyer sell the goods in the name of the Seller, nor describe or infer that the Buyer is the agent of the Seller. The Seller will not be held liable in any way whatsoever for any loss incurred by the Buyer under any Contract between the Buyer and any third party due to any default or breach whatsoever (especially delayed delivery for any reason whatsoever) by the Seller of this Contract.

## 18. SUB - CONTRACTING

The Seller reserves the right to sub-contract any part of the Contract, but in doing so the Seller will not be relieved of any liabilities under the Contract. The Buyer may not assign, transfer, declare a trust in respect of or otherwise dispose of any of its rights under the Contract without the prior consent in writing signed by a duly authorised representative of the Seller.

## 19. STATUTORY AND BYE LAW APPROVAL

It shall be the responsibility of the Buyer to obtain all necessary permissions and licences to conform to the provisions of Acts of Parliament, export laws of the UK, and to any other bye laws orders or regulations for the time being in force affecting the sale of materials under the Contract and the Buyer shall pay and indemnify the Seller against any/all fees payable, costs, claims and actions in connection therewith.

## 20. WHOLE AGREEMENT

- 20.1 Each party acknowledges that the Contract together with any variations and/or qualifications made pursuant to these Conditions contain the whole agreement between the parties and it has not relied upon any oral or written representation made to it by the other or its employees or agents.
- 20.2 Any provisions of these Conditions which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of these Conditions or the Contract.

## 21. NOTICES

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and addressed to the Seller at its registered office and to the Buyer at the address given on its order or to such other address as may at the relevant time have been notified to the party giving notice pursuant to this provision.

## 22. WAIVER

No waiver by the Seller of any breach of the Contract or there Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 23. LAW

These conditions and each and every Contract shall be governed by English Law and subject to the jurisdiction of the English courts.

London  
01494 460 910

Birmingham  
0121 556 3400

Manchester  
0161 368 4545

Glasgow  
0141 778 6975