

PORTABLE WELDERS LIMITED - TERMS AND CONDITION OF SALE

The Company's Terms and Conditions of Sale set out below govern this and any contract.

1. General

- 1.1 "The Company" is Portable Welders Ltd; "The Goods" means the products or services forming the subject matter of the order; "The Customer" means the person, firm or company from whom the Company takes the order and to whom it addresses all correspondence, including order quotation and acknowledgement, and invoice; "Order" is the request for Goods by the Customer; "Contract" refers to the supply of Goods by the Company to the Customer; "Parties" refers to the "Buyer" who is the Customer and "Supplier" who is the Company; The Customer may not assign its contractual rights hereunder to a third party but the Company reserves the right to manufacture or process all or any part of the Goods by means of subcontractors.
- 1.2 No variation to these conditions shall be accepted unless agreed in writing by the Company. All other terms which might otherwise be relevant and howsoever arising are (where possible) excluded. In the event of inconsistency between these conditions and such other terms referred to elsewhere then these conditions shall prevail save that clerical errors are subject to correction.
- 1.3 All quotations given by the Company and whether by telephone, facsimile, e-mail or in writing are subject to these conditions. A quotation given by the Company shall be valid for 30 days only from the time of issue unless expressly agreed otherwise in writing by the Company and is withdrawn unless the Company receives the Buyer's order made in pursuance of the quotation and on these conditions and accepts the same in writing before the period expires.
- 1.4 All Customer orders must be received by facsimile, e-mail or in writing, with an official Customer purchase order number. Confirmations of orders previously placed must clearly indicate the fact. The Company reserves the right to treat such order confirmations not so marked as separate orders.
- 1.5 A Contract shall not be legally binding between the Parties unless the Company has confirmed its acceptance in writing by means of order acknowledgement or otherwise. The Company may waive the requirement for such written confirmation at any time without notification to the Customer, and delivery of the Goods shall constitute confirmation for the purposes of creating a binding Contract.
- 1.6 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost of manufacture which is due to any factor beyond its control (such as, but without limitation to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or its failure to give the Company adequate information or instructions.
- 1.7 The applicable law to this contract is English and the parties agree to submit to the non-exclusive jurisdiction of the English courts except that this clause shall not preclude the Company taking proceedings against the Customer in any other court of competent jurisdiction, unless precluded by applicable law.
- 1.8 If any of these conditions, or part thereof, shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, or is held invalid or unenforceable in any jurisdiction, such term or provision or part thereof shall to that extent be deemed not to form part of these conditions, but the validity and enforceability of the remainder of these conditions shall not be affected.
- 1.9 Failure or neglect by the Company to enforce at any time any of these conditions shall not be construed or deemed to be a waiver of the Company's rights hereunder, not affect the validity of these conditions nor prejudice the Company's rights to take subsequent action.
- 1.10 A person who is not a party to these conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- 1.11 The headings to these conditions are for reference only and shall not affect their interpretation.

2 Delivery

- 2.1 If time is stated for delivery of the Goods, it runs from the date of the contract (if appropriate) or the date on which the Company receives complete instructions as to manufacturing details (whichever is the later). Time for delivery is given as accurately as possible but is not guaranteed. In no circumstances is time for delivery to be of the essence.
- 2.2 The Customer shall take delivery of the Goods at the Company's works within 48 hours of notification that they are ready for collection. The Company shall be entitled to store, at the Customer's risk, any of the Goods which the Customer fails or refuses to collect and the Customer shall pay all storage and additional costs incurred as a result of the failure or refusal.
- 2.3 When delivery is offered within normal business hours then, unless a specific delivery time has previously been agreed in writing, delivery of the Goods shall be deemed made and accepted by the Customer, without prejudice to any claims with regard to quality and quantity delivered. Offer of delivery of the Goods in accordance with the terms therefore amounts to delivery.
- 2.4 Any claims arising from damage, shortage, delay or loss of Goods in transit must be notified to the Company by telephone, facsimile or e-mail, within 48 hours of receipt or if the claim is for non-delivery within 48 hours of receipt of invoice, and in any event confirmed in writing within a further 7 days. If the Customer fails to notify the Company within the relevant period then its claim will be deemed to have been waived and absolutely barred. Acknowledgement of notification of a claim is not to be construed as admission of liability.
- 2.5 Where the contract allows more than one delivery, separately invoiced, a breach affecting one delivery shall not affect any other, provided that if payment for one delivery is payable and unpaid then the Company (without prejudice to its rights under these conditions) shall not be liable pending payment to make further deliveries until payment has been received.

3. Payment

- 3.1 Invoices are payable in full within 30 days of the invoice date in the currency in which they were invoiced without deduction. Time for payment is of the essence. If the Customer fails to pay within the stipulated time, the Company reserves the right to charge interest from the date of invoice or breach (whichever is earlier) to the date of payment, at the rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. If the Customer defaults in payment of an invoice, all other unpaid invoices shall become immediately payable.
- 3.2 Any prices quoted for U.K. or export sales are quoted Ex Works (EXW) unless otherwise stated. The Customer shall be additionally liable to pay any applicable value added tax (VAT) and the VAT tax point is the invoice date. EXW is defined in Incoterms 2000.
- 3.3 If the contract provides for payment by the Customer in a currency other than the currency of invoice, then if the value of that currency, when converted to the currency of invoice, is less on the date the payment is received by the Company than otherwise would have been the case, then the Customer will forthwith pay such deficiency to the Company.
- 3.4 Payment will only be deemed to have been made upon the receipt by the Company of cleared funds into the Company's bank account or cash. Any charges connected with payment transfer from the Customer's bank will be paid in full by the Customer.
- 3.5 If the Customer becomes insolvent or is in breach of any contract, all amounts owed to the Company whether invoiced or not will become immediately payable together with any relevant VAT. The company may suspend any delivery of Goods or service until all such amounts have been paid.

4. Ownership

- 4.1 Legal title to the Goods shall remain with the Company until the Company has received payment in full of the invoice. The risk in the Goods shall pass to the Customer when they leave the Company's premises and the Customer should insure against loss or damage in transit howsoever caused.

- 4.2 The Customer acknowledges that they are in possession of the Goods solely as a fiduciary for the Company until payment for the Goods is received in full by the Company. The Customer has the right to dispose of the goods in the course of its business and to pass on good title, such disposal being a bona fide sale for value without notice to the Company's rights. Following such disposal the Customer has the fiduciary duty to pay to the Company the amount outstanding under the contract.
- 4.3 Until the Customer has made a bona fide disposal of the Goods, the Customer shall store the Goods in such a way that they can be readily identified as belonging to the Company.

- 4.4 In the event payment has not been made, the Company may recover the Goods at any time from the Customer (if in their possession) if the Company judges that the amount outstanding from the Customer on the general statement of account between the parties is in excess of the credit limit the Company is willing to accord the Customer. For that purpose, the Company, its employees and agents may enter upon any land or building in which the Goods are located for the purpose of regaining possession of the Goods (including severance from the property where necessary).

- 4.5 The Customer's right of disposal shall automatically cease if a receiver is appointed over any of the Customer's assets, or a winding up order is made against them, or the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting or makes any arrangement or composition with their creditors or commits any act of bankruptcy. Upon such cessation of the Customer's right of disposal, and in the event payment has not been made, the Company may recover the Goods immediately. For that purpose, the Company, its employees and agents may enter upon any land or building in which the Goods are located for the purpose of regaining possession of the Goods (including severance from the property where necessary).

5. Company Liability

- 5.1 This condition is in substitution for and (to the extent permitted by law) excludes all conditions and warranties as to merchantable quality and fitness for purpose implied by statute, common law or otherwise. The Company will use every effort to ensure that all Goods are manufactured to the Customer's specification. It is the Customer's responsibility to ensure by tests or otherwise, that the Goods, including repeat orders, are suitable for the purposes for which they notified the Company that they required them and in the conditions in which they will be used. Any claims for defective materials or bad workmanship must be made in writing to the Company within 30 days of receipt of the Goods. The Customer shall return the Goods carriage paid to the Company for examination. If the Company finds that the Goods are defective, and provided that they have not been tampered with or subjected to improper treatment, the Company shall at its option replace or repair them. The Company shall not be liable for any loss or consequential damage arising from any default.
- 5.2 Any equipment or material not manufactured by the Company is sold only with such warranty as the manufacturers thereof give and as may be enforceable, such items not being warranted by the Company in any way.
- 5.3 Except for death or personal injury caused by its negligence, the Company shall not be liable for any loss (direct, indirect or consequential) unless notified in writing of the possibility and extent of such loss and the Company accepts such liability in writing with such loss being limited to the value of the Goods. Except where the Company has agreed to accept such liability, the Customer shall indemnify the Company against any claim by a third party arising as a result of Goods accepted by the Customer which were not suitable and fit for that third party's purposes.
- 5.4 The Company shall not be liable for any delay in delivery, or delay in performance of other acts required hereunder, when resulting from causes outside its control, "Force Majeure", such as, but not be limited to, acts of God, acts of Government, wars, revolutions, civil disturbance, strikes, lockouts, work breakdowns, floods, fire, perils of the sea and other transportation interruptions. Notice in writing of such an event shall be given immediately to the Customer. Such causes of delay shall extend the time for performance for a period equal to the period of delay.

6. Cancellation

If the Customer:-

- 6.1 Is an individual or a company and shall become bankrupt, or
- 6.2 Being a corporation shall go into liquidation or commence winding up (other than voluntary winding up for the purposes of solvent amalgamation or reconstruction), or
- 6.3 Has a Receiver appointed,
- 6.4 Stops payments or ceases or threatens to cease to carry on his business or to settle his debts when they fall due, and/or
- 6.5 Shall break any of the terms hereof,

Then the Company shall be entitled by notice in writing to rescind this contract and shall be entitled to compensation for so much of the Goods as may have been purchased or manufactured prior thereto and any loss or damage suffered by the Company as a consequence.

- 6.6 A Customer may not cancel an order for Goods without the Company's written agreement. If the Customer cancels an order without such agreement and at the time of such purported cancellation the cost of any item purchased by the Company for the execution of the order is higher than the market price, then without prejudice to any other contractual rights, the Company shall be entitled to charge the Customer with the difference. The Company shall further be entitled to charge the Customer with the full cost of manufacture, including purchase costs of any items, incurred up to the date of the purported cancellation, of any goods specially manufactured to the Customer's order. If work on an order is suspended because of the Customer's instructions or lack of instructions the Company reserves the right to treat such circumstances as a cancellation by the Customer.

7. Overseas contracts

- 7.1 "Overseas" means all countries except the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man. Where the Company is an exporter of Goods overseas the parties hereto agree that the provisions of the Uniform Laws on International sales act 1967 are excluded, and the Customer is responsible for obtaining all necessary import and export licences and the payment of customs duties and tariffs where applicable.

8. Returns

- 8.1 The Company reserves the right to charge a 10% restocking fee on Goods returned for credit. Credit will not be given for any Goods returned without the Company's prior authorisation.

9. Disputes

- 9.1 Any dispute concerning these conditions or contract subject thereto shall be referred to arbitration in accordance with the Arbitration Act 1996 or any re-enactment thereof for the time being in force.

10. General Lien

- 10.1 Without prejudice to any other remedy it may have in respect of Customer's unpaid debts, the Company shall have a general lien on all such Customer's property in its possession, and it shall be entitled on the expiration of twenty one days written notice to dispose of such property and to apply any proceeds to the credit of the Customer's account.