

The Customer's attention is drawn in particular to the provisions of clauses 7.10 and 7.11

1. **1. BASIS OF THE SALE**

1.1 We shall sell and you shall purchase the Products in accordance with our written quotation (if accepted by you), or your order (if accepted in writing by us), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by you.

1.2 No variation to these Terms shall be binding unless agreed in writing between our authorised representatives.

1.3 In entering into the Contract you acknowledge that you do not do so on the basis of or in reliance upon any representation, warranty or other term which is not confirmed in writing by us, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

1.4 Any advice or recommendation given by us or our employees or agents to you, or your employees or agents as to the storage, application or use of the Products which we do not confirm in writing is followed or acted upon entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.

1.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

2. **2. ORDERS, SPECIFICATIONS AND TECHNICAL INFORMATION**

2.1 No Order submitted by you shall be deemed to be accepted by us unless and until confirmed in writing by our authorised representative.

2.2 You are responsible to us for ensuring the accuracy of the terms of any Order (including any applicable Specification) that you submit, and for giving us any necessary information relating to the Products within a sufficient time to enable us to perform the Contract in accordance with its terms.

2.3 All Specifications, including drawings, and particulars of weights and dimensions submitted with our quotations are approximate only, and the descriptions and illustrations contained in our catalogues, price list and other sales and advertising literature are intended merely to present a general idea of the Products described therein, and none of these shall form part of the Contract. After acceptance of your Order in accordance with clause 2.1 a set of certified outline drawings will be supplied free of charge on request as the Specification.

2.4 Technical and performance information, provided orally, in writing, or by electronic means by or on behalf of us is provided for guidance only and is subject to change unless specifically incorporated by us in writing in the Contract, in which case (subject to the recognised tolerances and rejection limits applicable to such figures). You assume responsibility for the capacity and performance of the Products being sufficient and suitable for your purpose.

2.5 If the Products are to be manufactured or any process is to be applied to the Products by us in accordance with a specification that you submit, you shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with, or paid or agreed to be paid by us in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from our use of your specification.

2.6 Where practicable, Products are subjected by us to a regime of testing and analysis which we consider appropriate having regard to the nature of the Product and the use to which we reasonably consider that it might be put. In the absence of manifest error, the results of any such testing and analysis conducted by us shall be conclusive as to the nature of the Product concerned and its properties and shall take precedence over any results of any testing and analysis conducted by you or any third party. We reserve the right to charge for carrying out tests other than those specified in our quotation or for carrying out tests in the presence of you or your appointed representative if required by you. If you request to be present and fail to attend any tests following 7 days notice from us such tests will be carried out in your absence and shall be deemed to have been made in your presence.

2.7 We reserve the right to make any changes in the Specification of the Products which are required to conform to any applicable statutory or E.U. requirements or, where the Products are to be supplied to our specification, which do not materially affect their quality or performance.

2.8 No Order which we have accepted may be cancelled by you except with our agreement in writing and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

3. **3. PRICE OF THE PRODUCTS**

3.1 The price of the Products shall be our written quoted price set out in the Order. Unless otherwise stated by us in writing, all prices quoted are valid for 30 days only or until earlier acceptance by you, after which time we may alter them without giving you notice.

3.2 We reserve the right, by giving you written notice at any time before delivery, to increase the price of the Products to reflect any increase in the cost to us which is due to any factor beyond our control such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration in any applicable increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Products which is requested by you, or any delay caused by any of your instructions or your failure to give us adequate information or instructions.

3.3 Unless otherwise agreed in writing, all prices are given by us on an ex works basis, and where we agree to deliver the Products otherwise than at our premises, you shall be liable to pay our charges for transport, packaging and insurance.

3.4 The price is exclusive of any applicable value added tax or other tax or duty which you shall be additionally liable to pay to us.

3.5 The cost of pallets and returnable containers will be charged to you in addition to the price of the Products, but full credit will be given to you provided they are returned undamaged to us before the due payment date.

3.6 Where the Products are supplied for export from the UK, you shall be responsible for complying with any legislation or regulations governing the exportation of the Products from the United Kingdom or the importation of the Products into the country of destination and for the payment of any duties on them.

4. **4. TERMS OF PAYMENT**

4.1 Subject to any special terms agreed in writing between you and us, we may invoice you for the sums due in respect of the Products on or at any time after delivery of the Products, unless the Products are to be collected by you or you wrongfully fail to take delivery of the Products, in which case you shall be liable to invoice us for the sums due at any time after we have notified you that the Products are ready for collection or (as the case may be) we have tendered delivery of the Products.

4.2 You shall pay the sums due on each invoice in the currency stated on the invoice (without any withholding, deduction or set off on any account whatsoever) within 30 days of the date of our invoice, and we shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Products has not passed to you. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.

4.3 If the Products are delivered in instalments we shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on our part.

4.4 If you fail to make any payment on the due date then, without limiting any other right or remedy available to us, we may:

(a) cancel the Contract and any other contracts between you and us or suspend any further deliveries to you under the Contract and under any other contracts between you and us or demand payment of all outstanding balances owing from the you to us, whether then due or not;

(b) appropriate any payment made by you to such of the Products (or the products supplied under any other contract between the you and us) as we may think fit (notwithstanding any purported appropriation by you);

(c) charge the you interest (both before and after any judgment) on the amount unpaid at the rate of 4% per annum above the base rate for the time being of any applicable bank or other rate or duty which you shall be additionally liable to pay to us;

(d) charge you for all costs and expenses, including legal costs, incurred in the collection of overdue amounts.

4.5 You shall pay all amounts due under the Contract in full without deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part.

5. **5. DELIVERY INSPECTION AND ACCEPTANCE**

5.1 Delivery of the Products shall be made by you collecting the Products at our premises at any time after we have notified you that the Products are ready for collection or, if we agree some other place for delivery, by us delivering the Products to that place (the "Delivery Location").

5.2 Delivery of the Products shall be completed on completion of the loading of the Products at the Delivery Location.

5.3 Any dates quoted for delivery are approximate only and time for delivery shall not be of the essence of the Contract unless previously agreed by us in writing in which case our liability shall be limited to such liquidated damages as may be specifically agreed or before that date. For the avoidance of doubt, we shall not be liable for any delay in delivery of the Products that is caused by an event provided for in clause 8 below or your failure to supply us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

5.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by us to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

5.5 If we fail to deliver the Products (or any instalment) for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly liable to you, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price paid by you in respect of the Products not delivered.

5.6 If at the time stated for delivery you fail to take delivery of the Products or fail to give us adequate delivery instructions or fail to obtain any consent, licence or authorisation which is required for the acquisition, transportation or use of the Products (the obtaining of which shall be your sole responsibility), so as to enable delivery to be effected (otherwise than by reason of our fault) then, without limiting any other right or remedy available to us (including our right to request payment in accordance with Clause 4.2), we may:

(a) store the Products until actual delivery and charge you for the reasonable costs (including insurance) of storage; or

(b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

5.7 In the event of our employees or agents installing the Products at a site requested by you, special terms and conditions will apply.

6. **6. RISK AND PROPERTY**

6.1 Risk of damage to or loss of the Products shall pass to you:

(a) in the case of Products to be delivered at our premises, at the time when we notify you that the Products are available for collection; or

(b) in the case of Products to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of the Products, the time when we have tendered delivery of the Products.

6.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, the property in and title to the Products shall not pass to you until we have received in cash or cleared funds payment in full for the price of the Products and all other products that we agree to sell to you for which payment is then due.

6.3 Until such time as the property in the Products passes to you, you shall hold the Products as our fiduciary agent and bailee, shall keep the Products separate from your and third party goods and properly stored, protected and insured and identified as our property, but you may resell or use the Products in the ordinary course of your business. You will immediately notify us if you become subject to any of the events set out in clause 9.

6.4 Until such time as the property in the Products passes to you (and provided the Products are still in existence and have not been resold), we may at any time require you to deliver up the Products to us and, if you fail to do so forthwith, enter on any of your or third party premises where the Products are stored and repossess the Products.

6.5 You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain our property, but if you do so all moneys owing by you to us shall (without limiting any other of our rights or remedies) forthwith become due and payable.

7. **7. WARRANTIES AND LIABILITY**

7.1 Subject to the following provisions we warrant that the Products will correspond with their Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.

7.2 The above warranty is subject to the following conditions:

(a) we shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by you;

(b) we shall be under no liability in respect of any defect arising from fair wear and tear, inappropriate storage, wilful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or in writing), misuse or alteration or repair of the Products without our written approval;

(c) we shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;

(d) the above warranty does not extend to parts, materials or equipment not manufactured by us, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to us.

7.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.4 No warranty or representation is given by us:

(a) that the Products do not infringe any patent, copyright, design, trademark or other industrial or intellectual property right of any other person; and

(b) as to the suitability of the Products for any particular purpose or use under specific conditions whether or not the purpose of condition were communicated to us.

7.5 A claim by you which is based on any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by you) be notified to us within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure (but in any event no later than 12 months from the date of delivery). If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Products and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.

7.6 Where a valid claim in respect of any of the Products which is based on a defect in the quality or condition of the Products or their failure to meet specification is notified to us in accordance with these Terms, we will, where notice has been given in accordance with clause 7.5 and we have been given the opportunity to inspect the Products, at our option, replace the Products (or the part in question) free of charge provided that you return the same to us carriage paid, or, where it is not possible to return the Products, we will provide a service engineer on site to examine and to repair the Products and all reasonable travel, lodging and subsistence expenses will be charged to you.

7.7 Except as provided in this clause 7, we shall have no liability to you in respect of the Products' failure to comply with the warranty set out in clause 7.1.

7.8 These Terms shall apply to any repaired or replacement Products supplied by us.

7.9 Where safety guards are supplied with the Products you accept and agree that we shall not be liable for such guards complying with any law or regulations which may be in force.

7.10 Except in respect of: a) death or personal injury caused by our negligence, or that of our employees, agents or subcontractors (as applicable); or b) fraud or fraudulent misrepresentation; or c) breach of the terms of section 12 of the Sale of Goods Act 1979; or d) any matter in respect of which it would be unlawful for us to exclude or restrict liability, we shall not be liable to you whether in contract, tort (including negligence), breach of statutory duty or otherwise for any: (a) loss of profit; (b) loss of business; (c) depletion of goodwill; (d) for any indirect, special or consequential loss or damage, costs; (e) expenses; or (f) other claims for compensation whatsoever (whether caused by the negligence of us, our employees or agents or otherwise); which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all including a deliberate breach of the Contract by us, our employees, agents or subcontractors) or their use or resale by you.

7.11 Subject to clause 7.10 our entire liability under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, including a deliberate breach of the Contract by us, our employees, agents or subcontractors, shall not exceed the price paid for the Products (or where the Products are delivered in instalments, the price of the Products in the relative instalments), except as expressly provided in these Terms.

8. **8. FORCE MAJEURE**

8.1 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Products, if the delay or failure was due to any cause beyond our reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond our reasonable control: explosion, flood, fire, accident, war or threat of war, act of terrorism, regulations or prohibitions, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving our employees or those of a third party), difficulties in obtaining raw materials or supplies (except at increased prices), power failure or breakdown in machinery.

9. **9. INSOLVENCY OF CUSTOMER**

9.1 This clause 9 applies if:

(a) you make a voluntary arrangement with your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(b) an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or

(c) you cease, or threaten to cease, to carry on business;

(d) anything analogous to any of the events specified in clauses 9.1(a) to 9.1(c) occurs in relation to you under the laws of any applicable jurisdiction; or

(e) we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to us, we may cancel the Contract or suspend any further deliveries under the Contract without any liability to you, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. **10. INTERPRETATION**

10.1 In these Terms:

"Business day" means a day other than a Saturday, Sunday or public holiday in England and Wales;

"Contract" means the contract for the sale and purchase of the Products in accordance with these Terms;

"Customer" means the person, firm or company who accepts the Company's written quotation for the sale of the Products or whose written order for the Products is accepted by the Company and reference to "you" or "your" in these Terms means the Customer;

"Products" means the products (excluding any instalment of the Products) agreed in the Contract which the Company is to supply in accordance with these Terms;

"Company" means Woodcock & Wilson Limited registered in England and Wales under number 1353953 whose registered office is Airstrum Works, Blackmoorfoot Road, Crosland Hill, Huddersfield, West Yorkshire HD4 7AA and reference to "we", "us" or "our" in these Terms means the Company;

"Order" means your order for the Products as set out in your purchase order form, your acceptance of our quotation, or overleaf, as the case may be;

"Specification" means any specification for the Products, including any related plans and drawings, that is supplied to us by us, or produced by us and agreed by you;

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Customer and the Company from time to time; and

"writing" and any similar expression, includes facsimile transmission but not electronic mail and comparable means of communication.

In these Terms: (i) the headings are for convenience only and shall not affect their interpretation; (ii) references to clauses, unless otherwise provided, are references to clauses of these Terms; and (iii) a reference to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

11. **11. GENERAL**

11.1 The Company is a member of the group of companies whose holding company is MatchExtra Limited, and accordingly we may perform any of our obligations or exercise any of our rights under the Contract by ourselves or through any other member of our group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.

11.2 The Company may but the Customer shall not assign, transfer or sub-contract the performance of any or all of its obligations and assign or transfer any or all of its rights under or relating to the Contract.

11.3 These Terms, together with the Contract and any other terms agreed in writing between the parties from time to time, constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

11.4 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice. Such notices shall take effect: if delivered by hand, when left at the address for service; if delivered by first class pre-paid post to an address within the UK, 2 business days after posting; if delivered by first class registered post to a party outside the country of posting, 4 business days after posting; if given by facsimile, at the time of transmission provided that a confirming copy is set by first class post to the other party within 1 business day of transmission.

11.5 No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.6 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.7 If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.8 Save for MatchExtra Limited, or any other member of its group, a person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

11.9 Any disputes arising in connection with the Contract shall promptly be referred to a Director of each party who shall co-operate in good faith to resolve the dispute as amicably as possible within 21 business days of being notified.

11.10 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by the laws of England, and you agree to submit to the exclusive jurisdiction of the English courts.