

Terms & Conditions WSM – United Kingdom Ltd.

1. Definitions and interpretation

The definitions and interpretative provisions in Schedule 1 apply to these conditions.

2. Application of terms and conditions

2.1 Subject to any variation under condition 2.3 the Contract is made on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document form part of the Contract simply as a result of any such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and, subject to condition 10.3, any variation to these conditions and any representations about the Goods have no effect unless expressly confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on such representations which are not so confirmed.

2.4 Each order for Goods by the Buyer from the Company is deemed to be an offer by the Buyer to purchase Goods subject to these conditions.

2.5 No order placed by the Buyer is deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract comes into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 90 days only from its date unless the Company withdraws it.

2.8 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, installation, commissioning, use or maintenance of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk. Accordingly the Company is not liable for any such advice or recommendation which is not so confirmed.

3. Description

3.1 The description of the Goods is as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract.

4. Delivery

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods is effected at the Buyer's place of business.

4.2 It is the Buyer's responsibility to provide the Company with all appropriate instructions, documents, licenses or authorisations in good time for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be estimates and time for delivery must not be made of the essence by notice. If no dates are specified, delivery will be made within a reasonable time.

4.4 Subject to these conditions the Company is not liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business and depletion of goodwill) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).

4.5 Delay in the delivery of the Goods does not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.

4.6 If for any reason the Buyer does not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.6.1 risk in the Goods passes to the Buyer (including for any loss or damage caused by the Company's negligence);

4.6.2 the Goods are deemed to have been delivered; and

4.6.3 the Company may store the Goods and the Buyer is liable for all related costs and expenses (including, without limitation, storage and insurance).

5. Non delivery

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business is deemed to be the quantity received by the Buyer on delivery unless the Buyer provides conclusive evidence proving the contrary.

5.2 The Company is not liable for any non delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 days of the date when the Goods should in the ordinary course of events be received.

5.3 Any liability of the Company for non delivery of Goods is limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. Risk/title

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods does not pass to the Buyer until the Company receives in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods passes to the Buyer, the Buyer must:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer must produce the policy of insurance to the Company; and

6.3.5 hold the proceeds of the insurance on trust for the Company and not mix them with any other money or pay the proceeds into an overdrawn bank account.

6.4 The Buyer may resell the Goods before ownership passes to it solely on the basis that any sale:

6.4.1 is effected in the ordinary course of the Buyer's business at full market value; and

6.4.2 is a sale of the Company's property on the Buyer's own behalf with the Buyer dealing as principal when making it.

6.5 The Buyer's right to possession of the Goods terminates immediately if:

6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise obtains the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;

6.5.2 (being a body corporate) the Buyer convenes a meeting of its creditors (whether formal or informal);

6.5.3 the Buyer enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation;

6.5.4 the Buyer has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part of it;

6.5.5 documents are filed with the court for the appointment of an administrator of the Buyer;

6.5.6 notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule B1 to the Insolvency Act 1986);

6.5.7 a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer;

6.5.8 any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;

6.5.9 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer;

6.5.10 the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to trade; or

6.5.11 the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company may recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Buyer.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. Price

7.1 Subject to condition 7.2 the price for the Goods is that which is set out in the Company's price list as at the date of delivery or deemed delivery.

7.2 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, 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 Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

7.3 The price for the Goods is exclusive of any Value Added Tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer must pay in addition when payment is due for the Goods.

8. Payment

8.1 Where the Company has not agreed to give any credit, payment is due at the time the order is accepted by the Company and must be made before dispatch of the Goods.

8.2 Where the Company has agreed to give credit, payment will be due by the end of the month following the date of invoice.

8.3 Time for payment is of the essence.

8.4 No payment is deemed to have been received until the Company receives cleared funds.

8.5 All payments payable to the Company under the Contract become due immediately upon its termination despite any other provision.

8.6 The Buyer must make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.7 If the Buyer does not pay the Company any sum due under the Contract the Buyer must pay interest to the Company on that sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of The Royal Bank of Scotland Bank PLC. Interest accrues on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. Quality

9.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to conditions 9.3 to 9.7, inclusive, and 10) upon delivery and for a period of 12 months from the date of delivery, the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994 and be free from material defects in design, material and workmanship.

9.3 The Company is not liable for a breach of the warranty in condition 9.2 unless:

9.3.1 the Buyer gives written notice of the defective Goods to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and

9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company is not liable for a breach of the warranty in condition 9.2 if:

9.4.1 the Buyer makes any further use of the Goods after giving notice under condition 9.3.1;

9.4.2 the defect arises because the Buyer failed to follow the Company's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.

9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with the warranty in condition 9.2 the Company will, at its option, repair or replace them (or the defective part) or refund the price of those Goods at the pro rata Contract rate but, if the Company so requests, the Buyer must, at the Company's expense, return the Goods or the part which is defective to the Company.

9.6 If the Company complies with condition 9.5 it has no further liability for a breach of the warranty in condition 9.2 in respect of any defective Goods.

9.7 Subject to condition 6, any Goods replaced belong to the Company and any repaired or replacement Goods will be guaranteed, subject to condition 9, for the unexpired portion of the 12 month period.

10. Limitation of liability

10.1 Subject to condition 9, the following provisions of condition 10 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

10.1.1 any breach of these conditions; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (except the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract is limited to the price of the Contract; and

10.4.2 the Company is not liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential) or any claims for consequential compensation whatsoever and however caused which arise out of or in connection with the Contract.

11. Confidentiality

11.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. Termination and suspension

12.1 If the Buyer becomes subject to any of the events listed in clause 6.5, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer.

12.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company, if the Buyer becomes subject to any of the events listed in clause 6.5, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

12.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

12.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

12.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. Cancellation rights – CONSUMER SALES ONLY

13.1 This clause applies only where the Buyer is not acting in the course of a business or trade.

13.2 This clause does not apply in relation to any products made to the Buyer's specification or otherwise personalised.

13.3 The Buyer may cancel its Contract or any part of it at any time after formation of the Contract until the date seven working days after delivery of the Order to the Buyer ("Cancellation Request"). The Buyer does not need to provide the Company with any reason for the cancellation.

13.4 To cancel the Contract, the Buyer must contact the Company in writing to inform the Company by sending an e-mail to info.uk@wsm.eu or by sending a letter to the Company at 29 Ocean House, Hazelwick Avenue, Crawley, West Sussex, RH10 1NP. The Cancellation Request is effective from the date the e-mail or letter was sent.

13.5 The Buyer will receive a full refund of the price on the credit or debit card used to pay for the Goods and any applicable delivery charges paid for. The Company will process the refund due to the Buyer within 30 calendar days of the day of the Cancellation Request.

13.6 The Buyer must return any Goods delivered to it, where the Contract for such Goods has been cancelled as soon as reasonably practicable. The Company may, in its discretion, agree to collect the Goods from the Buyer.

13.7 Unless the Goods are faulty or not as described, the Buyer will bear the cost of return of the Goods to the Company and the Company may deduct any such costs incurred by it from the amount due to be refunded to the Buyer.

13.8 The Buyer must keep the Goods in its possession and take reasonable care of them until they are returned to the Company.

14. Assignment

14.1 The Buyer may not assign the Contract or any part of it without the prior written consent of the Company.

14.2 The Company may assign the Contract or any part of it to any person.

15. Force majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the quantity of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company. Such circumstances include, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. If the event in question continues for a continuous period in excess of 60 days, the Buyer may give notice in writing to the Company to terminate the Contract.

16. General

16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will to the extent of the illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision will continue in full force and effect.

16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

16.5 The Company and the Buyer do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 The formation, existence, construction, performance, validity and all aspects of the Contract will be governed by English law and the parties submit to the non exclusive jurisdiction of the English courts.

17. Communications

17.1 All communications between the Company and the Buyer about the Contract must be in writing and delivered by hand or sent by prepaid first class post or facsimile transmission:

17.1.1 (in case of communications to the Company) to its registered office or such changed address as is notified to the Buyer by the Company; or

17.1.2 (in the case of the communications to the Buyer) to its registered office (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as is notified to the Company by the Buyer.

17.2 Communications will be deemed to have been received:

17.2.1 if sent by prepaid first class post, two clear Business Days after the date of posting;

17.2.2 if delivered by hand or by email, on the day of delivery;

17.2.3 if sent by facsimile transmission, at the completion of transmission during business hours at its destination or, if not within business hours, at the opening of the next period of business hours. For this purpose business hours means between 9.00 a.m. and 5.00 p.m. on a Business Day.

Schedule 1 Definitions and interpretation (Condition 1)

1. The following words have the following meanings:

Business Day a day between Monday and Friday, inclusive, on which clearing banks in the City of London are open for business to the public.

Buyer the person(s) who purchase(s) the Goods from the Company.

Company WSM-United Kingdom Ltd.

Contract any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point the place where delivery of the Goods is to take place under condition 4.1.

Goods any goods, including replacements, agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. References to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

3. Use of the singular includes the plural and vice versa.

4. Use of any gender includes the other genders.

5. The index and headings are included for convenience only and do not affect the construction of these conditions.

6. Any reference to persons includes natural persons, partners, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).