



## STILL MATERIALS HANDLING LIMITED TERMS AND CONDITIONS OF SALE

### 1) Definitions and Interpretation

- a) In these Conditions:
- 'the Company' means STILL MATERIALS HANDLING LIMITED (Companies House Registration 01463301).
  - 'the Purchaser' means the company, firm or individual who has bought, or agreed to buy the Goods.
  - 'the Quotation' means the quotation addressed to the Purchaser by the Company.
- The expression 'export contract' means a contract for the sale of goods where the goods are consigned outside the United Kingdom.
- 'the Goods' means any item of goods or services of whatsoever nature which is to be sold by the Company to the Purchaser.
- The expression 'liability whatsoever' shall include, without prejudice to the generality of the expression, liability in tort (including negligence), contract, restitution, rescission, statutory or common law duty, representation and including liability for consequential loss (including loss of revenue or profit) and damage of any kind howsoever caused or arising.
- The expressions 'Ex Works' and 'FOB' shall have the meanings given them by the current ICC incoterms at the time of the relevant accepted order save where such meanings are inconsistent with the terms thereof.
- Any expressions defined in the body of these Terms and Conditions shall have the meaning as so defined therein and where used in other parts of these terms and conditions.
- Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms and conditions.
- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to writing or written includes email.
- Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2) General

- a) The Quotation does not constitute an offer to supply and no contract exists unless and until there has been an unconditional acceptance by the Company in writing of an order placed (orally or in writing) by the Purchaser.
- b) The acceptance of the Purchaser's order whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to these terms and conditions herein which shall apply to the exclusion of any other provisions or terms and conditions contained in any other document issued by the Purchaser and, in particular, but without prejudice to the generality of the foregoing contained in any order sent by the Purchaser.
- c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's catalogues, brochures, price lists and other published matter, are approximate only and none of these form part of any contract or give rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Goods as described therein and not a warranty or representation.
- d) The quotation, order, acceptance and all other contract related documents including the price of the Goods agreed between the parties whether issued before or after the formation of a contract, must not be copied, reproduced or communicated by the Purchaser to persons unconnected with the purchase of the Goods without the Company's consent in writing.
- e) Any deviations in the Goods delivered from the particulars of the Goods stated in the contract will not be a ground for rejecting the Goods and treating the contract as repudiated unless the Goods are fundamentally and materially different and lower specification than the Goods ordered.
- f) Where the Purchaser makes a request to modify an order once placed, and where the modification is agreed by the Company, the Purchaser shall pay an administration fee to the Company for such change (in addition to any change in Price for the Goods as a result of the modification) as follows: £300 per change for Counterbalance and bespoke or VNA equipment and £100 per change for all other warehouse equipment to include any of the following modifications : i) modification of configuration of specification, ii) modification of requested delivery date, or, iii) modification of order conditions.

### 3) Price

- a) Unless specifically stated otherwise the Price for the Goods set out in the quotation, order or order acceptance shall be an Ex-works (Incoterms) price excluding freight, insurance, carriage and packing charges, specialist equipment, VAT and all applicable taxes and duties. VAT and all applicable taxes and duties shall be payable in addition to the Price. Where the Purchaser requires delivery by the Company then the cost of freight, insurance, carriage and packing charges, specialist equipment, VAT and all applicable taxes and duties relating to the delivery shall be payable by the Purchaser in addition to the Price and shall be determined as at the date of the Company's invoice.

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- b) The cost of any special packaging shall be determined at the date of the invoice and shall be payable by the Purchaser.
- c) The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim unless both the validity and the amount thereof have been expressly admitted by the Company
- d) The Company shall be entitled to adjust the price of the Goods, whether before or after acceptance of the Goods, in the event of any increase howsoever arising in the cost to the Company of supplying the Goods.
- e) Where there is a lead time in excess of 180 days between the placement of the Purchaser's order and the planned delivery date of the Goods, the Company reserves the right to adjust the Price for the Goods in line with the change in the producer price index published by the Federal Statistical Office (Destatis) ref: 61241-0006 for product group GP09-2822: Manufacture of Lifting and Handling Equipment.
- f) The price adjustment detailed in clause 3 e) will be calculated as follows:
- At the time of the placement of the Purchaser's order (month N), the Order Index will be defined and based on the published producer price index at N-2 months
  - 8 weeks before date of production of the Goods (month D), the Delivery Index will be defined and based on the published producer price index at D-2 months
  - The Delivery Index and Order Index will be compared as follows to determine the Variation (V) :  $V = (\text{Delivery index}/\text{Order index}) - 1$
  - In case of Variation (V) being less than +/-3%, no price adjustment will be made
  - In the case of Variation (V) being greater than or equal to +/-3%, the Price for the Goods will be adjusted as follows: Price for the Goods as at the time of order placement x (1 + Variation (V)) = adjusted price due for payment by the Purchaser
- g) The Company will advise the Purchaser in writing of any adjustment in the Price of the Goods in line with clauses 3 d) to 3 f) above.

#### 4) Cancellation of Order

- a) If the Purchaser does not wish to proceed with the purchase of the Goods after the Purchaser places an order for the Goods, the Company will try to find an alternative use for the Goods in order to mitigate any loss, but except only as described in clause 4 b), the Purchaser shall pay liquidated damages to the Company for such cancellation as follows:
- i) for standard Goods the liquidated damages shall be up to the value of 40% of the Price for the Goods.
  - ii) For specialist Goods, such as third party Goods not manufactured by the Company or for automated Goods, very narrow aisle (VNA) Goods or Goods which are bespoke in nature or where significant bespoke modifications have been made to it, the liquidated damages shall be up to 100% of the Price for the Goods.
- b) Should the Purchaser not wish to proceed with the purchase of the Goods, due only to an increase in the Price of the Goods being applicable as per clauses 3 e) to 3 g) above, the Purchaser shall have seven (7) working days from receipt of notification of the adjusted price to inform the Company in writing of its decision to cancel the order for the Goods and the liquidated damages detailed in clause 4 a) shall not apply. For the avoidance of doubt, the provisions of clause 4a) shall continue to apply in full for cancellation for any other reason or where such notice of cancellation under this clause 4 b) is not received within seven (7) working days from receipt of notification by the Company to the Purchaser of the adjusted Price.
- c) If the damages are not paid within four (4) weeks of the Purchaser informing the Company that it is not proceeding with the purchase of the Goods, interest will automatically accrue on a daily basis from such 28th day until the date of payment. Interest will be charged at Bank of England Base Rate plus five (5) per cent until such time as payment is made in full cleared funds.

#### 5) Payment

- a) The Purchaser shall, except where other payment arrangements are specifically agreed in writing in the acceptance of order, pay a deposit equal to 10% of the Price in £ sterling for the Goods when they place the order with the balance of the Price payable on delivery of the Goods subject to receiving an invoice from the Company. If the invoice is received after delivery, then it will be payable on receipt. The Company is under no obligation to progress any order unless the deposit is paid at the same time as placing the Order. The Company may invoice for the price of the Goods and may separately invoice for the costs of delivery after delivery of the Goods and such invoice shall be payable on receipt. The Purchaser shall pay invoices in full and in cleared funds by the due date. Payment shall be made to the bank account nominated in writing by the Company.
- b) If payment for the Goods is not made when due the Company (without limiting any other rights or remedies) may charge interest thereon from the due date until payment in full whether before or after judgement at the rate of four per cent per annum above the base rate of National Westminster Bank plc from time to time in force and interest shall be compounded at monthly intervals from the due date of payment for the Goods until payment. Time of payment shall be of the essence.
- c) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to make delivery of any further consignment of Goods under this contract or Goods under any other contract and without incurring any liability whatsoever to the Purchaser for any delay.

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d) In addition to any lien to which the Company may otherwise be entitled, the Company shall, in the event of the Purchaser being insolvent or failing to pay the purchase price due under this or any other contract with the Company (including any contract treated as a separate contract by virtue of Condition 7(f) hereof), The Company is entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Goods sold and delivered to the Purchaser by the Company under this or any other contract.

**6) Title in Goods**

- a) All the legal and beneficial title ownership and property in the Goods (Property) shall, notwithstanding delivery of the Goods to the Purchaser, remain in the Company and shall not pass to the Purchaser until the Purchaser has made full payment for such Goods and, as a separate and severable undertaking, title shall remain with the Company until the Purchaser has paid in full all other sums that are or that become due to the Company (or any Group Company) from the Purchaser for sales of Goods or on any account, in which case title to these Goods shall pass at the time of payment of all such sums.
- b) So long as the property in the Goods remains in the Company the Purchaser shall keep the Goods free from any lien or from any charge or similar encumbrance and shall, at its own cost, maintain those Goods in satisfactory condition and keep them insured for their full price against all risks with an insurer that is reasonably acceptable to the Company. The Purchaser shall obtain an endorsement of the Company's interest in the Goods on its insurance policy. On request the Purchaser shall allow the Company to inspect those Goods and the insurance policy and shall supply such information as the Company may reasonably request relating to the Goods and the ongoing financial position of the Purchaser.
- c) So long as the property in the Goods remains in the Company and full payment for the Goods shall not have been made, whether or not payment shall have become due, the Company shall (unless restricted from doing so by the Insolvency Act 1976 or some other rule of law), have the right at any time and for any reason to retake possession of the Goods and for that purpose with or without notice to the Purchaser, the Purchaser shall allow or shall procure the right for the Company to enter any premises where the Goods may be to collect the Goods. Such retaking of possession shall not relieve the Purchaser from its obligation to purchase the Goods by paying the full price thereof and shall not prejudice any rights of the Company including any right it may have to accept a repudiation by the Purchaser of the contract relating to the Goods.
- d) The Purchaser may, provided the Purchaser has not become insolvent or had a receiver of its undertaking or any part thereof appointed, sell the Goods, whether or not component parts of other goods, to a third party notwithstanding that the property therein remains with the Company provided that the sale so made by the Purchaser is in the ordinary course of its business, the Purchaser sells as principal and not an agent of the Company, and the sale is at full market value and takes place before the Company has sought to retake possession of the Goods in accordance with Condition 6(c) above, in which case title to those Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- e) Any resale of the Goods, or a sale of other goods of which the Goods may be component parts, by the Purchaser before the Company has received full payment for the Goods shall be made by the Purchaser as fiduciary and the Purchaser shall pay the proceeds of such resale or sale into a separate account designated with the name of the Company which shall account to the Purchaser for any amount by which the proceeds so received exceed the aggregate amount due to the Company from the Purchaser.
- f) Unless prevented by any rule of law from so doing the Company may apply any payment received from the Purchaser in or towards the satisfaction of any sum due in respect of the Goods or any item of the Goods whether or not the Purchaser required the payment to be applied in or towards the satisfaction of some other sums due to the Company.
- g) The Company may maintain an action for the price of the Goods sold notwithstanding the property to them may not have passed to the Purchaser.
- h) So long as the property in the Goods remains in the Company the Purchaser shall notify the Company of any circumstances that might give rise to the taking (whether lawful or otherwise) of the Goods by another person or the actual or attempted taking thereof.

**7) Risk and Insurance**

- a) The Goods shall be at the Purchaser's risk from the occurrence at the earliest point of time, of any of the following events whichever is the earlier:
  - i) the physical delivery of the Goods to the Purchaser at the Company's Works.
  - ii) the physical delivery of the Goods to the Purchaser's carrier or to an independent carrier for the purpose transmission to the Purchaser or his nominee, or
  - iii) the physical delivery of the Goods to the Purchaser's place of business by the Company.
- b) Notwithstanding the risk in the Goods has passed to the Purchaser, the Company may effect insurance of the Goods in its own name and in their full value, or such value as the Company may decide, against all usual risks and the costs of such insurance shall be determined as at the date of and included in the invoice. All insurance monies received shall be applied towards replacement or repair of the Goods.

**8) Delivery**

- a) Unless otherwise stated in writing the date for the delivery shall run from the date on which acceptance of the order for goods is communicated to the Purchaser.

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- b) Delivery and the Purchaser's acceptance of the Goods shall be deemed to have taken place at the earliest point in time at which any of the events specified in Condition 7(a) above takes place. Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be proof of the delivery and the Purchaser's acceptance of the Goods.
  - c) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries or deliveries by instalments and to determine the route and manner of delivery of the Goods and shall for the purposes of Section 32(2) of the Sale of Goods Act 1979 be deemed to have the Purchaser's authority to make such contract with any carrier as to the Company may seem reasonable. If the route involves sea transit the Company shall not be obliged to give the Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1979.
  - d) If the Company is prevented from making delivery of the Goods or any part thereof on the agreed date of delivery or from installing the Goods or any part thereof on the agreed date of installation by any cause whatsoever outside its control, it shall be under no liability whatsoever to the Purchaser and shall be entitled at its option either to cancel the contract or to extend the time or times for delivery or installation by a period at least equivalent to that during which such delivery or installation has been prevented.
  - e) The Company may deliver and order for the Goods by instalments and where delivery of the Goods is made in instalments each instalment shall be construed as constituting a separate agreement to which all the provisions if these conditions shall (with any necessary alterations) apply.
  - f) Delivery dates shall be estimates only and time shall not be of the essence for delivery.
  - g) Delays in the delivery of an order shall not entitle the Purchaser to refuse to take delivery or an order or claim damages, or terminate the order.
  - h) Should the Purchaser cancel a planned delivery of the Goods to the Purchaser within 24 hours of the agreed date for such planned delivery, the Purchaser shall reimburse all costs incurred by the Company related to the cancelled planned delivery including but not limited to the transportation costs.
  - i) Should the Purchaser fail to accept delivery of the Goods or should there be an issue at the delivery location which prevents the planned delivery from taking place on the agreed delivery date or any time agreed for such planned delivery, the Purchaser agrees to reimburse all costs incurred by the Company related to the aborted or cancelled planned delivery including but not limited to the transportation costs.
  - j) Where the Purchaser does not agree to take delivery of the Goods within 5 business days from the date that the Goods become available for delivery or within 5 business days from the date of any cancellation or failed delivery attempt then the Company may store the Goods and charge the Purchaser all reasonable costs of such storage. Where no revised delivery date is agreed and the Goods are stored for a period in excess of 1 month the Company may treat this as a cancellation of the order by the Purchaser and the provisions of clause 4 shall apply.
- 9) Guarantee**
- a) The Company guarantees the Goods supplied by it, against only defective materials and defective workmanship from the date of delivery (see clause 8 b) above) for a period of six months or one thousand working hours (whichever is the less) except for original equipment sold in the UK, in which case the corresponding period shall be twelve months or two thousand working hours (whichever is the less) provided the Purchaser notifies the Company in writing of any alleged defect within ten working days of its discovery.
  - b) Under this guarantee the Company will on the Purchaser returning the Goods carriage paid to such place as the Company shall direct (and Section 35 of the Sale of Goods Act 1979 shall not apply), make good any such defect by repair or replacement if, in the opinion of the Company, the defect constitutes a breach of this guarantee, where a repair or replacement is not possible then in the Company's discretion it may replace the Goods with a similar specification and aged Goods or may refund the purchase price paid by the Purchaser for the defective Goods.
  - c) No claim will be met by the Company under this guarantee arising out of fair wear and tear or if the Goods have been incorrectly fitted, misused, subjected to neglect or abnormal conditions, not maintained properly or used with a lubricant of an unsuitable specification or have been involved in any accident or any attempt to repair, replace or modify them has been made without the prior sanction of the Company or if they have been in any way dealt with contrary to any instructions issued by the Company.
  - d) This guarantee is conditional upon:
    - i) the Purchaser carrying out all daily and weekly maintenance as specified in the appropriate operating instructions, handbook or manual for the goods in question, and
    - ii) the Company or its authorised distributor providing periodical maintenance during the guarantee period.
  - e) Where the Company has provided Goods which are the subject of a separate product warranty as set out in the Company's standard written product warranty document then the terms of the product warranty document shall apply and if there is any conflict between the product warranty document and this clause 9) then the terms of the product warranty document shall prevail.
  - f) Subject to clause 10 b) this Guarantee states the Company's total liability and obligation to the Purchaser in relation to a defective Good and all other warranties and representations whether express or implied are, to the fullest extent permitted by law excluded and shall not apply. Should these Conditions apply to a consumer transaction where the Purchaser is buying a Good as a consumer then this Guarantee shall not affect the statutory rights of the Purchaser in their capacity as a consumer.

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#### 10) Exclusion and Limitation of Liability

- a) The Purchaser is relying on its own skill and judgement in relation to the Goods supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its servants or agents may possess as to the purpose for which the Goods are supplied.
- b) Nothing in these terms and conditions has the effect of limiting or excluding the Company's liability for death or personal injury caused by its negligence, or for its fraud or where such liability cannot be excluded or limited by law
- c) Save as expressly provided in clause 9 above and subject to clause 10 b) the Company shall be under no liability whether arising under contract, tort (including negligence), misrepresentation, rescission, restitution, statutory or common law duty or otherwise to the Purchaser for:
  - i) any defect in, failure of, or unsuitability for any purpose of the Goods or any part thereof whether the same be due to any act, omission, negligence or wilful default of the Company or its servants or agents, or to faulty design, workmanship or materials or any other cause whatsoever and all conditions, warranties or other terms, whether expressed or implied, statutory or otherwise, inconsistent with the provisions of this Condition, are hereby expressly excluded, or
  - ii) any deviations in the Goods from the particulars of the Goods stated in the contract save that where the Company consider, in absolute discretion, that any such deviations are material it will replace the Goods with goods that comply with the particulars stated in the contract.
  - iii) Any of the following specific heads of loss each of which are separate and severable from the other, Loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings or indirect or consequential loss.
- d) Subject to clause 10 b) and the exclusions above the Company's total liability to the Purchaser arising under contract, tort (including negligence), misrepresentation, rescission, restitution, statutory or common law duty or otherwise shall not exceed a sum equal to 110% of the purchase price paid by the Purchaser to the Company for the Goods which are the subject matter of the claim or to which the claim arises.
- e) Unless otherwise stated in writing, any statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Goods are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company.
- f) Should these Conditions apply to a consumer transaction the Purchaser's statutory rights as a consumer shall not be affected by this clause 10.
- g) The Purchaser undertakes that it will comply and will procure that its employees and every other person working with, on or near, or using any goods supplied by the Company comply in full with the instructions and recommendations made in the relevant operating instructions handbooks or manuals which are provided by the manufacturers with such goods and/or that they will comply with all other instructions, whether written or verbal, given by the Company or the manufacturer in connection with the use or operation of the Goods.

#### 11) Indemnity

The Purchaser shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profit or loss of use or goodwill), which may be made against the Company by any third party or which the revenue of the Company may sustain, pay or incur in relation to any third party claim or demand arising out of or in connection with the manufacture, installation, sale or use of the Goods, or of other goods of which the Goods are a component part, and which is caused in whole or in part by any act or omission of the Purchaser.

#### 12) Export Contracts

In the case of export contracts all import or export duties, tariffs, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary export and import licences in respect of the Goods shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary export and import licences.

#### 13) Intellectual Property Rights

- a) All rights interests and title in any patents, copyright, design rights, trademarks, trade names, registered designs or any other intellectual property rights (Intellectual Property) in respect of the Goods shall at all time remain vested in the Company any or the manufacturer and no right title or interest in such Intellectual Property shall vest in the Purchaser. The Purchaser and any person to whom the Purchaser resells the Goods, shall have the right to use the Goods as delivered by the Company, without alteration from the manufacturer's standard specification, for the purposes for which they were designed and shall have a limited license to use any related Intellectual property but only where necessary and incidental to the use of the Goods as they were designed.
- b) In the event of any claim being made or action being brought or threatened in respect of infringement of third party Intellectual property rights in respect of the Goods the Purchaser will make no admissions in respect thereof and will notify the Company thereof forthwith and the Company shall be entitled to conduct all

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negotiations and take all necessary proceedings to dispute the same in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely in the discretion of the Company. In such an event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company may reasonably request and the Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought if any such claim is made or action brought or threatened as a result of work done in relation to the Goods by the Company in accordance with the Purchaser's specifications or by the use to which the Goods are put by the Purchaser or any other acts or omissions of the Purchaser other than contemplated and allowed by clause 13 a).

**14) Sub - contracts**

The Company reserves the right to sub - contract the performance of the contract or any part thereof.

**15) Assignments**

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the written consent of the Company. The Company may assign or transfer the benefit and burden of any contract with the Purchaser to any person without the consent of the Purchaser and such assignment or transfer shall be effective upon notice to the Purchaser.

**16) Entire agreement**

The Contract for the supply of Goods shall consist of the Order acceptance and these terms and conditions and any other document specifically referred to in the order as accepted and such Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**17) Proper Law**

All contracts made between the Company and the Purchaser shall be governed by, and construed in all respects in accordance with English and Welsh law. The Parties agree that the English courts shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any contract or its subject matter or formation

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