

WALLWORK HEAT TREATMENT LTD, TECVAC LTD TERMS AND CONDITIONS OF SALE

DEFINITIONS

- 1.1 'The Company' means Wallwork Heat Treatment Limited or Tecvac Limited, or any subsidiary Company as the case may be.
- 1.2 'The Customer' means the Customer of the Company.
- 1.3 'The Contract' means the contract between the Customer and the Company.
- 1.4 'The Goods' means any goods forming the subject of this contract including parts and components or material incorporated in them, delivered by or collected from the Customer to the Company for treatment.
- 1.5 'The Treatment' means and includes all processes, thermal or otherwise, carried out by the Company on goods or components supplied by the Customer or his agent.
- 1.6 'He' shall include 'she'.

QUOTATION AND ESTIMATES

- 2.1 Quotations by the Company (which shall only be given in writing) unless otherwise stated in them shall be open for acceptance only within 30 days of the date of issue.
- 2.2 When a quotation is not supplied, the price charged by the Company for treatment shall be the price ruling at the date of completion of the treatment. The Company's ruling prices, or those of any of its subsidiary Companies may be inspected at the premises of the Company concerned.
- 2.3 For the avoidance of doubt the Company's ruling prices and system of discount, if any (but not certification charges) shall include a minimum price chargeable in any circumstances such prices and system of discount being available on enquiry.
- 2.4 Estimates by the Company whether written or verbal are given in good faith nevertheless they shall be reviewable entirely at the discretion of the Company and shall not be binding on the company or constitute an offer by the company until confirmed by written quotation (see 2.1).

EXISTENCE OF CONTRACT

- 3.1 No contract shall come into existence between the Company and the Customer until the Customer's order however given is accepted by the earliest of (a) the Company's written or verbal acceptance; or (b) by the issuing of an invoice by the Company.
- 3.2 This agreement including the documents and instruments referred to herein supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter hereof and with the schedules, documents and terms of contract set out herein constitutes the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof. The customer shall not rely on any representation or arrangement, understanding or agreement whether written or oral not expressly set out or referred to in this agreement
- 3.3 Any individual accepting these terms and conditions of behalf of the Customer certifies that he has been authorised by the Customer to do so and has obtained such authority.
- 3.4 Each party warrants and undertakes to the other that in the performance of these conditions each party will comply with all laws, rules, regulations, decrees and other ordinances issued by any supra governmental, governmental state or other authority relating to the subject matter of the agreement and to the performance of the parties hereto of their obligations hereunder.
- 3.5 The Customer warrants that the goods are the absolute property of the Customer and none are subject to any option, right to acquire, assignment, mortgage, charge, lien or

otherwise or the subject of any factoring arrangement, hire purchase, conditional sale or credit sale agreement.

- 3.8 Where practicable, the Company issues a copy of these conditions at or before acceptance of any order from a new Customer. The Company's conditions are printed on every invoice issued by the Company to ensure that all customers remain aware of them.

PRICES

- 4.1 Prices exclude freight, insurance, delivery charges, VAT, certification and other taxes and duties. Prices invoiced are calculated in respect of the quantity of the goods supplied by the Customer to the Company on a quantum merit basis.
- 4.2 The Company shall have the right in respect of any incomplete portion of the contract to adjust its prices for any increase in the price of material, parts, labour, transport, changes in work or delivery schedules or quantities or cost of any kind arising for any reason after the date of the contract.

PAYMENT

- 5.1 All payments shall be paid by the Customer in cash on collection by the Company of the Customer's goods provided that where a credit account has been set up by the Company for the Customer all invoices shall be payable without discount of any kind in pounds sterling within 30 days after the end of the month of the date of the Company's invoice at the Company's premises stated on the invoice (e.g. invoice 2nd July payable 30th August) and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.
- 5.2 Without prejudice to any other right of the Company, if a Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice and shall pay interest on any overdue amount from the date on which payment was due to that on which it is made, whether before or after judgement, on a daily basis at the rate of 10% above the base rate from time to time quoted by Barclays Bank PLC and reimburse to the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.

TITLE

- 6.1 Where at the Customer's request goods are delivered to a third party, for the purpose of Section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of the goods as the Customer has, and if the goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.
- 6.2 Notwithstanding the earlier passing of risk, title in the goods shall be vested in the Company upon completion of the treatment and shall not pass to the Customer until any amount due under any invoice payable by the customer has been paid in full.
- 6.3 After the goods have been delivered to the Customer and until title passes to the Customer under Condition 6.2 hereof, the Customer shall hold the goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
- 6.4 The Company shall have a lien on all of the Customer's property in the Company's possession for all the sums due at any time from the Customer and shall be entitled to use, sell or dispose of that property as agents for and at the expense of the Customer and apply the proceeds in and towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining

- after payment of any sum due to the Company and the cost of sale and disposal, the Company shall be discharged of any liability in respect of the Customer's property.
- 6.5 If the Customer sells the goods after completion of the treatment but before the title to the goods has passed to the Customer under Condition 6.2 hereof, the entire proceeds of the sale of the goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any overdrawn bank account and shall be identifiable at all times as the Company's money.
- 6.6 The Company shall be entitled to maintain an action for the price due under the contract notwithstanding that title in the goods has not been passed to the Customer.

RISK, DELIVERY AND PERFORMANCE

- 7.1 the Customer when ordering shall indicate to the Company whether
- (a) goods are to be collected from the Customer and delivered by the Company following treatment OR
 - (b) the Customer is to deliver and collect the goods from the Company OR
 - (c) goods are to be collected from the Customer by the Company and collected from the Company by the Customer OR
 - (d) the Customer is to deliver the goods to the Company and the Company return the goods to the Customer.
- Failing the Customer giving any such indication (b) aforesaid shall be applicable.
- 7.2 In the event that the Customer decides that he shall deliver the goods to the Company the Customer shall ensure that goods despatched are adequately and sufficiently packed in suitable containers, taking account of any applicable Health and Safety Regulations as prescribed by law (without prejudice to any other of these conditions). Goods are deemed to be delivered to the Customer by the Company when the Company either delivers them to the Customer or any duly appointed agent of the Customer or other delivery point agreed (whether in writing or not).
- 7.3 The Company accepts no responsibility for the package of goods to be transported by the Company nor for the adequacy of packaging or containers supplied by the Customer, (and the Customer will ensure that goods are appropriately packaged and loaded safely on the Company's means of transport) nor for any loss, damage, deterioration, consequential loss or claim resulting from inadequate packing or loading, whether the goods are delivered to or from the Company by the Customer or to or from the Customer by the Company. The Company will be responsible for the goods (provided that the Customer shall comply with all Health and Safety Regulations as prescribed by law, and otherwise) only when the goods are on the premises of the Company (and the Customer will seek the appropriate insurance to cover the risks of collection and delivery).
- 7.4 The Company shall be under no responsibility to return the Customer's packaging or containers and shall be entitled to substitute its own packaging or containers.
- 7.5 Risk in the goods passes when they are delivered to the Customer.
- 7.6 The Company may at its discretion deliver the goods to the Customer by instalments in any sequence.
- 7.7 Where the goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the contract in respect of the goods previously delivered or undelivered goods.
- 7.8 The company is approved to international quality standard I.S.O.9000 and will always in good faith attempt to fulfil the Customer's specification for the treatment of the goods and application of the Company's services. The Company accepts no responsibility for the suitability of the treatment for the purpose intended by the Customer, whether such purpose was communicated to the Company or not, or for any loss, damage or claim arising out of non-suitability of the treatment.

- 7.9 If specific instructions are not supplied by the Customer, the Company will in good faith attempt to fulfill the Customer's requirements after referring to any available information, technical literature or material standards. The Company accepts no responsibility for the fitness or otherwise of the product for any purpose intended by the Customer whether or not notified to the Company by the Customer, or for any loss, damage or claim arising thereon.
- 7.10 If instructions supplied by the Customer are found to be incorrect or incomplete, or if materials supplied are defective or not of the type, brand, nature, dimensions or quality specified by the Customer, the Company accepts no responsibility for the results of treatment, nor for any distortion or failure of the goods during or after the treatment. If for any reason, incorrectly specified goods are reprocessed, the Company accepts no responsibility for any distortion or failure of the goods resulting from re-treatment, and the Customer will be charged at the appropriate rate in accordance with the Company's ruling prices which are available for inspection at the Company's premises.
- 7.11 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate the contract. In no event will the Company be liable for any delay or failure in delivery or performance for a period of 24 hours from delivery of the goods to the Company unless expressly provided by a Director of the Company.

CLAIMS NOTIFICATION

- 8.1 The Company shall inspect samples or test pieces from each treated batch for conformity to specification. It is the Customer's responsibility to check the bulk of the goods and to perform such tests as are necessary to reveal any damage or departure from specification before any further work or treatment is carried out on the goods. The Company reserves the right to levy a charge in respect of any inspection procedure carried out by the Company at variance with the Company's standard commercial practice and the Company reserves the right to levy a charge for certification by the Company. Such charge payable is available on express request to the Company.
- 8.2 Any claim that any goods have been delivered damaged or not of the correct quantity or have been incorrectly treated shall be notified by the Customer to the Company within 3 days of their delivery to the Customer.
- 8.3 Any alleged defect shall be notified by the Customer to the Company within 3 days of the delivery of the goods to the Customer or in the case of any defect in the goods which is not reasonably apparent at inspection, within 3 days of the defect coming to the Customer's attention.
- 8.4 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made against the Company and the Customer shall if requested by the Company return promptly any goods the subject of any claim and any packaging, securely packed and carriage paid to the Company for examination.
- 8.5 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the provisions of conditions 8.1 to 8.4.

SCOPE OF CONTRACT

- 9.1 Under no circumstances shall the Company have any liability of whatever kind for:
- (a) any defects resulting from wear and tear, accident, improper use by the Customer, use by the Customer otherwise than in accordance with the instruction or advice of the Company or manufacturer of any goods, neglect or from any instructions or materials provided by the Customer;
 - (b) any goods which have been by way of further heat treatment and/or by further processing adjusted or modified otherwise than by the Company;

- (c) the suitability or non-suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
- (d) any descriptions, illustrations, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are to be treated as or relied upon only as representation;
- (e) any technical information, recommendation, statements or advice furnished by the Company, its servants or agents, not given in writing in response to a specific written request before the contract is made;

EXTENT OF LIABILITY

10.1 The liability of the Company to the Customer for any loss or damage of any nature arising from any breach of any express or implied condition or warranty of the contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way arising out of or in connection with performance or purported performance or failure to perform the contract shall be limited to the limitation of liability as set out in condition 10.2 hereof or in accordance with this condition.

10.2 In view of:

- (a) the natural hazards of heat treating or thermal processing
- (b) the Company's lack of control over initial manufacture of the goods
- (c) the Company's lack of control over the type or quality of materials used by the Customer.
- (d) the Company's lack of control of the final use of components it treats.
- (e) the fact that the Company only carries out one part of the whole manufacturing process of the goods.
- (f) the Company's inability to ascertain the level of damages arising from any loss or damage to goods at the Company's premises
- (g) the rapid turnaround of goods at short notice.
- (h) the requirement to carry out work at irregular hours.

or if

- (i) the customer fails to state properly the specification of goods lodged

the Company accepts no responsibility for shrinkage, expansion, distortion or rupture during or after treatment, or for any failure to attain specified properties, except in the case of negligence by the Company or its servants or agents or for any wastage or loss of multiple goods to a quantum of 3%.

In any case and for any reason (whether arising out of a negligent act or not) as a result of the disparity between the Company's charges for its processes and the value of goods processed, the Company's liability shall be limited to three times the amount of the contract price, or £3,000 (three thousand pounds) (exclusive of VAT) whichever is the lesser sum. Such sum shall be paid as liquidated and ascertained damage in full and final settlement of the Company's entire liability for any loss, damage, cost or expenses suffered by the Customer.

10.3 At the Customer's written request the Company will seek 'product guarantee' insurance. It is the Customer's responsibility to decide whether or not the Company's limits of liability are acceptable, or whether extra insurance is required, and to notify in writing the Company of its requirement for product guarantee at or before placing an order. If no written instructions are received at the time of or before the goods are delivered for treatment to the Company's premises, no such insurance will be sought by the Company.

- 10.4 The Customer will be responsible for payment of all premiums and costs involved in effecting such insurance and the Company will not proceed with any such order until the insurance policy is in effect and all premiums paid and the written confirmation of such provided to the Company.
- 10.5 It is the Customer's responsibility to decide whether the Company's limits of liability are acceptable or not and to notify the Company if they are not, before any goods are delivered for treatment. In the event that an extension of these limits, or cover in respect of loss or damage not otherwise provided for in these conditions, including insurance for loss, damage or theft during transport on the Company's vehicles, is required it is the Customer's responsibility to either:
- (a) arrange insurance cover for itself before submitting goods for treatment OR
 - (b) notify the Company in writing of its requirement, before submitting the goods for treatment, in which case the Company will if practically possible, submit a revised quotation incorporating such requirements.
- 10.6 Where the Company is liable in accordance with this condition (10) in respect of only some or part of the goods, the contract shall remain in full force and effect in respect of the other part or parts of the goods and no set off or other claim shall be made by the Customer against or in respect of such other parts or goods.
- 10.7 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or work have been done to the goods by any person other than the Company.

GENERAL

- 11.1 The Company may sub-contract the performance of a contract in whole or in part.
- 11.2 The contract is between the Company and the Customer as the principals and shall not be assignable by the Customer without the express consent in writing of the Company but shall be assignable by the Company.
- 11.4 The Company may at its discretion suspend or terminate the supply of any goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the contract or any other agreement with the Company or becomes insolvent, has a Receiver appointed of it's business or is compulsorily or voluntarily wound up, or the Company bona fide believes that any of those events may occur, and in the case of termination the Customer shall forfeit any deposit paid.
- 11.5 If the goods are treated in accordance with any design or specification provided or made by the Customer, the Customer shall indemnify the Company against all claims, costs, expenses and liabilities of any nature in connection with them including any claims whether actual or alleged that the design or specification infringes the rights of any third party.
- 11.6 All tools, patterns, materials, drawings, specifications and other data provided by the company shall remain it's property and all technical information patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall be the property of the Company.
- 11.7 The contract and it's subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.
- 11.8 The Company shall not be liable for any delay or for the consequences of any delay in performing any of it's obligations under this agreement if such delay is due to any cause whatsoever beyond its' reasonable control whereupon the Company shall be entitled to a reasonable extension of time for performing such obligations.

- 11.9 Each clause in these conditions shall be construed as a separate undertaking and if one or more clause is found to be unenforceable or in any way an unreasonable restraint of trade the remaining clauses shall bind the practice.
- 11.10 The Company's terms and conditions are to remain intact until any notice of change is provided to the Customer in writing. Customers are to refer to the terms and conditions on all contracts made between the Customer and the Company until the Customer is notified otherwise.

CANCELLATION

- 12.1 Orders for goods which are to be treated specifically for the Customer will be charged in full unless written notice of cancellation is received before treatment commences. Orders for stock items, if any, may be cancelled by written notice at any time prior to the goods being allocated to the contract but if a cancellation notice is received after the goods have been allocated to the contract, then a package and handling charge will be payable by the Customer.

FORCE MAJEURE

- 13.1 if the performance of the contract or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it, the party so affected upon giving prompt notice to the other party shall be excused from performance to the extent of prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove such causes of non-performance and shall continue the performance under the contract with the utmost despatch whenever such causes are removed or diminished.

LAW AND CONSTRUCTION

- 14.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English Courts and in the case of any dispute whatsoever arising in relation to the contract, the matter shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be appointed by the current President of the Institute of Materials in London under the terms of the Arbitration Act.
- 14.2 The headings of conditions herein are for convenience of reference only and shall not affect the interpretation of the Conditions.

NOTICES

15. Any notice given under the contract shall be in writing by facsimile transmission, or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the facsimile transmission or the day following that on which the notice was posted.
16. These conditions supersede and invalidate all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the parties either verbally or in writing prior to the contract date and which shall become null and void.
17. Nothing contained in these conditions shall be construed as to constitute either party an agent of the other or create a partnership or joint venture.