

# WINGET LIMITED

## TERMS AND CONDITIONS OF SALE

In these conditions "the Company" means WINGET Limited; "the Buyer" means the person with whom the contract is made and "the goods" means the product sold by the Company to the Buyer pursuant to the contract of which these terms and conditions form part ("the Contract").

### 1. GENERAL

(a) These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form or contract or other communication sent by the Buyer to the Company and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.

(b) Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.

(c) If in any particular case any of these Conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

### 2. PRICES

Unless otherwise agreed the price payable by the Buyer for each delivery of the goods shall be the Company's ruling price as published in its price list current at the date of despatch. The prices quoted in the Company's price list are "ex-works", unpacked and are exclusive of VAT. The Company reserves the right to vary these prices from time to time and without notice and although the Company normally makes every effort to notify its customers of these price changes, it is nevertheless the duty of the Buyer if unsure of the current price of any particular goods to ascertain from the Company the exact price of the goods.

In the event of the Company submitting a written quotation for the supply of goods, the prices therein stated are effective if an acceptance in writing is received within 28 days of the date of the quotation. The Company reserves the right to alter the price or prices in the quotation if the Buyer does not accept delivery of the goods within the time limits laid down in the quotation.

### 3. ORDERS

Notwithstanding that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

### 4. TERMS OF PAYMENT

Where no other terms of payment are specified the Company's terms of payment are:-

(a) All new goods manufactured by the Company will be sold on a proforma invoice basis.

(b) All other sales of goods will be on a credit basis, payment being on a net monthly basis following the month of delivery. No discount for early payments will be granted.

(c) Without prejudice to any other rights it may have the Company is entitled (both before and after any judgement), to charge interest at a rate equal to the higher of the interest rate payable on court judgements or 2% above the base rate from time to time of Barclay's Bank Plc on overdue payments of the price of the goods or the price of any instalments thereof.

(d) The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to the Company because of any disputed claim (the claimant may be an associated Company) in respect of faulty goods or any other alleged breach of the Contract, nor shall the Buyer be entitled to set-off against any amount payable under the Contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.

(e) Payment shall be due forthwith upon the occurrence of any of the events referred to in Condition 18 below.

### 5. CANCELLATION

Without prejudice to condition 6 hereof, the Buyer shall have no right in any circumstances to cancel the Contract without the Company's prior written consent and if such written consent is given it may be given on such terms and conditions as may be imposed by the Company, including a condition relating to the payment by the Buyer of adequate compensation.

### 6. DELIVERY

(a) Any period for delivery shall be calculated from the time of the Company's acceptance of the Buyer's order or from the Company's receipt of all information necessary to enable the Company to manufacture or procure the manufacture of the goods (whichever shall be the later). Dates or periods for delivery stated by the Company are only approximate and time is not of the essence of the date for delivery.

(b) Should the manufacture or delivery of any of the goods to the Buyer whether by the Company or a subsidiary company or an independent carrier, be prevented or hindered directly by fire, the elements, war, civil commotion, strikes, lock-outs, industrial dispute, shortage of raw materials or fuel notwithstanding that the Company has taken all reasonable steps to procure the same, shortage of labour, break-down or partial failure of plant or machinery, acts, orders or regulations of Government, delay on the part of any independent sub-contractor or supplier, or any other cause whatsoever beyond the complete control of the Company or any of its subsidiary companies concerned with the manufacture or delivery of the goods, then the time for delivery of the goods shall be extended for a reasonable period having regard to the effect of the delaying cause on the manufacture or delivery of the goods. If at the end of any such extended period the manufacture or delivery of any of the goods is still prevented or hindered by any of the aforementioned causes the time for delivery thereof shall be similarly extended for a further reasonable period.

If any delay in the manufacture or delivery of the goods results from any of the aforementioned causes neither the Company nor the Buyer shall be entitled to cancel the contract nor shall the Buyer be entitled to any compensation for the resultant delay.

### 7. ADDITIONAL COSTS

The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Buyer's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

### 8. INTELLECTUAL PROPERTY

The Buyer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which the Company may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the goods if made to the specification or special requirements of the Buyer.

### 9. CARRIAGE

(a) If the Company is asked to arrange for carriage of the goods then such carriage shall be at the Buyer's cost and risk. Without prejudice to the passing of property, the risk in the goods shall pass to the Buyer immediately prior to loading before despatch. No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the goods occurring prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the goods) or for non-delivery will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in case of claims for loss, damage or non delivery with a copy to the carrier if the Company's own vehicles have not been used to deliver the goods);

(i) within seven days of delivery for loss, damage, defect or non-compliance with the Contract: or

(ii) within ten days of the date of the invoice for non-delivery.

In the event of a valid claim for defect, loss, damage, or non-compliance with the Contract or non-delivery the Company undertakes as its option either to reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.

If the Buyer shall fail to give notice in accordance with condition i or ii above, the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set-out in condition (10) below) thereafter be wholly barred. The Buyer shall take delivery of the goods within 14 days of receiving notification from the Company that the goods have been completed. If the Company does not receive forwarding instruction from the Buyer sufficient to enable it to despatch the goods at the Buyer's expense within 14 days after the date of notification that they are ready for despatch, the Buyer may at its sole discretion arrange for storage of the goods. If the Buyer does not take delivery or arrange for storage, the Company shall be entitled to arrange storage at its own works or elsewhere, on the Buyer's behalf and all charges for storage, insurance or demurrage shall be paid for by the Buyer, the goods nevertheless remaining at the risk of the Buyer immediately after notification by the Company to the Buyer that the goods have been completed.

(b) Where the goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

(c) The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to goods sent by the Company.

### 10. DEFECTIVE GOODS

#### (i) FINISHED PRODUCTS

Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the goods with any description or sample are hereby expressly negated. If any part becomes defective due to faulty manufacture or materials within twelve months from the date of purchase by the Buyer replacements parts will be provided free of charge but only when the following conditions have been adhered to:

(a) The Product must not have been neglected, misused or modified in anyway.

(b) The Product must have been serviced as recommended in the WINGET Service Booklet. Servicing records shall be made available to the Company on request.

(c) The assurance does not apply to tyres, tubes or batteries or to defects arising from the fitting of any part not made or approved by the Company.

(d) Any part replaced under this assurance will be covered for the balance of the twelve-month period referred to above.

Excluded from this assurance are any parts which become defective due to normal wear and tear including filters, oils and all service items including but not limited to brakes, clutch linings, etc.

If the Buyer is the original retail purchaser, the above assurance applies to him.

If the Buyer is a "WINGET Distributor", the Company assures him that it will reimburse him in line with the Company's Warranty and Policy Manual.

### (ii) PARTS

A warranty of 6 months covering defects due to a faulty manufacture or materials is given to the Buyer of genuine WINGET Limited parts and accessories, whether delivered with new equipment, purchased as a replacement part or fitted during the course of service work carried out by the dealer. In the event that a warranty claim is made in connection with parts and accessory purchases, the warranty will be limited to reimbursement of parts cost only. The Company reserves the right to supply parts or materials free of charge and also to ask the Buyer to return any faulty parts to the Company's premises carriage paid before reimbursement is effected.

As a condition precedent to the Company's liability pursuant to this Condition 10, the Buyer must notify the Company in writing within 14 days of any fault occurring. The Company shall not be liable for imperfect work caused by any inaccuracy in any drawing, bill of quantities or specification supplied by the buyer.

### 11. LOSSES

(a) Nothing herein shall impose any liability upon the Company in respect of any defect in the goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agent including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the goods.

(b) The Company shall not be liable for any costs, claims damages (whether direct, indirect or consequential), or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits or by reference to accrual of such costs, claims, damage or expenses on a time basis.

### 12. RETURNS

The Company disclaims liability for goods returned without written consent of the Company. Any goods approved for return must be advised in writing quoting the Company's Advice Note number or invoice number, and must be of merchantable quality. The Company also disclaims liability for any returns whilst in transit to the Company. The Buyer must pay the costs of transport of any returns.

### 13. CONDITIONS

The rights of the Company or the Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by the Company in respect of any breach by the Buyer shall operate as a waiver in respect of any subsequent breach.

### 14. LEGAL CONSTRUCTION

The Contract shall in all respects be construed and operate as a contract made in England subject to English Law and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.

### 15. PASSING OF TITLE AND RISK

(a) From the time immediately prior to loading before despatch the goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.

(b) The Buyer may only re-sell the goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.

(c) Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the goods.

(d) Pending payment of the full purchase price of the goods the Buyer shall at all times keep the goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

### 16. MINIMUM ORDER CHARGE

The Company reserves the right to make a minimum order charge of £10 or such greater amount as it shall from time to time determine on all orders for goods. This charge will be calculated before trade terms, carriage and packing and VAT.

### 17. LIMITATION OF LIABILITY

(a) Where under the Unfair Contracts Terms Act of 1977 the test of reasonableness and its application to any terms and conditions hereof, the Buyer shall be deemed to have accepted the terms and conditions hereof as being reasonable at the time at which the contract was concluded.

(b) Whilst every effort is made to ensure that descriptions, drawings and other information and correspondence, catalogues etc., are accurate, no warranty is given in respect thereof and the Company shall not be liable for any error therein and shall not be liable for damages for misrepresentation, whether made orally or in writing. Further, the Company reserves the right to modify the design and specification of the goods at any time without notice but not so that the Buyer shall be obliged to accept something fundamentally different from what he has ordered.

(c) If at any time any Court shall consider that any of the terms and conditions hereof are not reasonable then in that event the Company's liability hereunder shall be limited to the value of goods in question in respect of each and every claim save that where the Buyer makes more than one claim in respect of one incident or of the goods comprised in any one order, the Company's liability in respect of those claims shall so be limited in any event.

(d) Nothing in these conditions shall be intended to exclude or restrict the Company's liability for death or personal injury where such exclusion or restriction of liability is prohibited by the Unfair Contracts Terms Act 1977.

### 18. TERMINATION OR SUSPENSION OF CONTRACT

The Company shall be entitled, without prejudice to its other rights and remedies to terminate wholly or in part the Contract and any or every contract between itself and the Buyer or to suspend delivery or any further deliveries under the Contract (without prejudice to the Company's right subsequently to determine the Contract and any or every other such Contract for the same cause should it so decide).

In any of the following events:

(a) If any debt is due and payable by the Buyer to the Company but it is unpaid.

(b) If the Buyer has failed to provide the Company with an acceptance letter of credit, bill of exchange or any other security as required by the Contract.

(c) If the Buyer has failed to take delivery of any goods under any contract between them and the Company otherwise than in accordance with the Buyer's actual rights.

(d) If the Buyer becomes insolvent or being a body corporate has passed a resolution for voluntary winding-up except where solely for the purpose of reconstruction or has suffered an Order of the Court for it is winding-up to be made or has had a Receiver appointed or being an individual or partnership has suspended payment of his or their debts in whole or in part or has proposed or entered into any composition or arrangement with his or their creditors or has had a Receiving Order in Bankruptcy made against him or them.

The Company shall be entitled to exercise its aforesaid rights of termination or suspension at any time during which the event of default giving rise thereto has not ceased or been remedied and in the event of any such suspension the Company shall be entitled as a condition of resuming delivery under any contract between it and the Buyer to require payment of or such security as it may require for the payment of the price of any further delivery.

### 19. EXCLUSION CLAUSE

Notwithstanding any other provision of these general conditions of business, nothing in these conditions confers or purports to confer any right to enforce any of their terms on any person who is not a party to them.