

Watkins Hire Limited (Registered In England No. 03599314) ("WHL") & All Trading Divisions
TRADING TERMS AND CONDITIONS OF SALE

1. CONTRACT TERMS

- 1.1 The following terms and conditions apply to all contracts for sale concluded by WHL with a customer ("the Customer") and shall not be excluded or varied by any terms and conditions of purchase of the Customer or otherwise unless expressly agreed in writing by WHL. Subject to the foregoing all warranties, terms and conditions whether express or implied by statute, common law, in equity or otherwise relating to any contract or the subject matter or performance, including any the Customer seeks to impose, are excluded to the fullest extent permitted by law.
- 1.2 Nothing in Clause 1.1 or any term or provision of the contract shall exclude or restrict rights and remedies of either party which cannot be excluded or restricted by law including statutory rights of a Customer dealing as a consumer. If any term or provision conflicts with any such enforceable statutory right then the statutory right applies to the extent of conflict subject to any modification referred to in Clause 1.5.
- 1.3 A person who is not a party shall have no right under or arising out of The Contracts (Rights of Third Parties) Act 1999 to enforce any term or provision.
- 1.4 WHL may use agents and contractors for or connected to supply or post supply.
- 1.5 If any term or provision of the contract is held by a court or other competent authority to be invalid, void or otherwise unenforceable, or is otherwise unenforceable in whole or in part in England or any other jurisdiction the validity of the other terms and provisions and the remainder of the term or provision in question shall not be affected in that jurisdiction and all terms and provisions shall be unaffected in their application elsewhere. If the term or provision or part in question would be enforceable if modified and is capable in law of being modified then it shall apply subject to such modifications as set out below or otherwise agreed in writing.

2. ORDERS AND CONFIRMATION

- 2.1 The Customer may place an order with WHL orally or in writing or by use of WHL's website online facility. The Customer shall ensure its order is complete and accurate in all respects and provide all such information as WHL may reasonably request after placing an order including written confirmation of an oral order placed.
- 2.2 No order is accepted by WHL until WHL has expressly agreed to supply to the order orally or in writing and only to the extent expressly agreed in whole or part by WHL ("the Confirmation") or (if earlier) by conduct of WHL by making the supply of goods to that order. A mere acknowledgement of receipt of an order is not in itself sufficient to bind WHL.
- 2.3 Goods to the description stated in the order or (if different) the Confirmation or (in the absence of a Confirmation) the delivery note or receipt shall be supplied as stated in it on these terms and conditions and subject to the foregoing (where appropriate) with reference by WHL to sales literature and materials supplied or made available by WHL on its website or otherwise.
- 2.4 A contract is made on the date the order is accepted in whole or part by WHL by the Confirmation or (if earlier) on the date on which supply of goods by WHL is made and these terms and conditions are incorporated into the contract by reference.
- 2.5 The Customer agrees that it has not relied on any representation, warranty or assurance in entering into the contract with WHL save as expressly agreed in writing by WHL. No representation, warranty or assurance after the contract is made is binding on WHL unless confirmed in writing by WHL.
- 2.6 The Customer may not cancel an order, and as a consequence the contract which is made with WHL, once the order is accepted in whole or in part by WHL or (if earlier) once the supply of goods by WHL is made except in circumstances expressly set out or referred to in these terms and conditions particularly in Clause 10.
- 2.7 WHL may set out in writing any Confirmation given orally and in the event of conflict the written version shall prevail.
- 2.8 WHL may correct a clerical error or other error or omission in any Confirmation, sales literature and materials, data and other information supplied or made available by WHL and do so to the fullest extent permitted by law without liability for the error or omission. The Customer shall notify WHL of known errors.
- 2.9 Unless otherwise confirmed in writing by WHL reference by WHL to any sales literature and materials is to those current at the date the contract is made.
- 2.10 The Customer acknowledges that all rights and intellectual property in documents, data and other information supplied or made available by WHL remain at all times the sole property of WHL or the manufacturer or relevant third party.
- 2.11 The Customer agrees that WHL and its officers, employees, agents and contractors may use all documents, data and other information, and in particular may process all personal data (including sensitive data), supplied or made available by the Customer connected to the contract or the subject matter or performance and for any post supply commitment or marketing purposes of WHL and all other purposes expressly agreed in writing by the Customer or permitted by law.
- 2.12.1 The Customer shall have a non-exclusive right to use information supplied or made available by WHL for agreed purposes and as permitted by law.

3. DELIVERY

- 3.1 WHL will endeavour to supply goods on or before the delivery date agreed by WHL but time of delivery shall not be of the essence of the contract unless otherwise expressly agreed in writing by WHL or required by law for a Customer dealing as a consumer. Unless the context otherwise admits any references in these terms and conditions to "delivery" include when goods are made available for collection by or delivered to the Customer or to its order (including if the Customer wrongfully refuses to accept delivery) whichever is sooner.
- 3.2 Unless otherwise agreed in writing delivery must be made to the address of the Customer paying for the goods which it is assumed is the correct address.
- 3.3 Failure by the Customer to collect goods within 14 days after the date of notification by WHL that they are ready for collection or failure by WHL to deliver goods within 14 days after the delivery date in each case due to Customer fault (including if the Customer wrongfully refuses to accept delivery) will give WHL the right either to store the goods and charge for storage or to sell the goods at the best possible price WHL can readily obtain and to recover from the Customer the contract price less the proceeds of sale together with all interest and all charges, costs and expenses which WHL is entitled to be paid (including for these purposes those properly incurred for or connected with storage or sale).

- 3.4 WHL is not liable for delays in delivery or non-delivery owing to government direction, quota, and embargo or in other circumstances set out or referred to in Clause 14 including failure or delay by the Customer in collection for such reasons.
- 3.5 The Customer will be charged for the cost of delivery to their premises or a third party (including a collection point), unless otherwise agreed in writing.
- 3.6 Where delivery is specified over two or more instalments each payment for an instalment will be due within the agreed payment period following delivery of goods in the instalment. Failure or delay in delivery of one instalment shall not entitle the Customer to treat the contract as a whole as repudiated.
- 3.7 All deliveries must be signed for.
- 3.8 Most goods are delivered either by courier or post depending on their size, value or destination and agreed special requirements. Some goods may be delivered by WHL own delivery service or by the manufacturer or other third party. Different goods on the same order may be delivered separately.
- 3.9 Delivery times are calculated in working days (being any day Monday to Friday inclusive (other than bank and public holidays in England)). Postal and courier deliveries should arrive within 2-5 working days of acceptance of order. WHL do organise special deliveries (timed deliveries or weekend deliveries) after Customer request.
- 3.10 For orders placed after 3pm next day/special delivery is at the discretion of WHL.
- 3.11 If goods are supplied on consignment stock basis delivery is the date of supply to the Customer or to its order or (if earlier) to a third party to hold on consignment and not date of use or any other draw down unless otherwise agreed in writing.
- 3.12 If goods are supplied on consignment stock basis the Customer shall deliver to WHL within 5 working days of the end of each month a true accurate and comprehensive return confirming in writing all goods used or otherwise drawn down within that prior month such return to be in an agreed form and in default as WHL reasonably requests. The Customer shall provide all such information and assistance (including access to the Customer's premises or of a third party over which the Customer has custody or control) as WHL reasonably requests to verify the return(s).

4. PASSING OF TITLE

- 4.1 Ownership of goods will remain with WHL until all sums of money due to WHL under the contract have been paid in cash or cleared funds.
- 4.2 Until the Customer has paid all money due the Customer will keep the goods on a fiduciary basis, store them separately from other goods (including those supplied by WHL under a different contract or instalment), attach them to an identification mark so they can be recognised and will not process them, amend them or merge them with other goods, but keep them whole and intact.
- 4.3 The Customer may sell and deliver the goods to a third party in the normal course of business until otherwise directed by WHL or until the happening of any of the events in Clause 4.6 below but the proceeds of any such sale shall be WHL' and shall be held by the Customer in a separate account in trust for WHL until all monies are paid.
- 4.4 At any time before payment of monies which are overdue, WHL shall have the right after giving notice to retake possession of the goods and for such purpose shall have the right to enter the Customer's premises or of a third party over which the Customer has custody or control.
- 4.5 On receipt of a notice from WHL or on the happening of any events in Clause 4.6 below the Customer's authority to sell the goods shall be withdrawn and all goods the property of WHL shall be immediately delivered to WHL by the Customer.
- 4.6 The events referred to in Clauses 4.3 to 4.5 inclusive are:-
 - (i) Appointment of a Receiver, Manager, Administrator, Liquidator or other office holder in respect of the Customer or any property of the Customer or an IVA or CVA in relation to the Customer or notice of same;
 - (ii) Arrangements by the Customer with his creditors;
 - (iii) Customer ceasing trading as a whole or in a material respect;
 - (iv) Petition or Resolution for administration or winding up of the Customer or Petition for bankruptcy of the Customer or notice of same;
 - (v) Act of bankruptcy or indicative of insolvency by the Customer; or
 - (vi) If the Customer is or becomes insolvent.

5. RISK

Risk in the goods shall pass to the Customer on delivery at which time the Customer will insure in the full reinstatement value and produce evidence of any end insurance relating to the goods belonging to WHL as trustee for WHL and in a separate account.

6. RETURNS POLICY

- 6.1 WHL is deemed to have no knowledge of the particular purpose or market for which the goods are required unless the contract so specifies. The Customer is deemed to have purchased the goods relying on the Customer's own knowledge and expertise after making due enquiry.
- 6.2 Goods will only be accepted for a credit refund for a period of 28 days after sale to the end user. After that time WHL reserve the right to either repair or replace at WHL' discretion.
- 6.3 On trade and other business sales when the Customer is not dealing as a consumer WHL will accept returns within a period of 28 days for a credit refund or replacement if the goods returned are undamaged subject as stated in this Clause 6.
- 6.4 Customers may incur a restocking credit charge and will pay a sum confirmed in writing by WHL not exceeding 15% of net price together with value added tax or other sales tax chargeable on such sum, should a credit refund be requested. Thereafter WHL will deal only with warranty claims and repairs.
- 6.5 The Customer will only be entitled to replacement in the event of damaged goods other than damage by the Customer or other persons for whom WHL is not responsible in law.
- 6.6 For Customers in the Hire/Rental Trade WHL, once the product is put on hire or rent the standard warranty is null and void.
- 6.7 WHL supply giving the Customer the benefit of a manufacturer 12 month parts only warranty or as otherwise stated by the manufacturer warranty terms.
- 6.8 The Customer must contact WHL prior to returning any goods to obtain a returns number. Goods cannot be accepted for return without this number and WHL shall ensure it is promptly provided. Contact details are:
E-mail: hire@watkinshire.co.uk Tel: 0500 526696

7. QUANTITY

The Customer shall not be entitled to cancel the order and/or determine the contract made or claim a refund and/or damages provided the total delivery is not less than 80% of the agreed quantity and shall pay pro rata for the quantity so delivered.

8. PRICE

8.1 Subject as provided in these terms and conditions the contract price is that quoted by WHL. In respect of the goods manufactured outside the UK the Customer shall pay for any increase in price due to a change in exchange rates or the cost of shipping (BAF/CAF) and insurance between when the contract is made by WHL and collection or delivery. The Customer shall pay any increase due to increased supply costs in other circumstances set out or referred to in these terms and conditions particularly in Clause 14.

8.2 Where applicable value added tax or such other applicable sales tax will be added to the price at the appropriate rate at the tax point date and any reference to "net price" is to the contract price net any such taxes unless otherwise expressly stated.

8.3 All prices quoted by WHL are the price ex WHL' premises including any Import Duty into the UK. All other delivery charges to any premises (other than WHL's premises) and any other tax, duty or impost relating to the supply will be added at the appropriate rate where applicable.

8.4 WHL shall confirm the price and all taxes, duties, imposts, charges, costs and expenses payable in addition to price, and thereafter any change made to the price or such items and do so on or as soon as possible after acceptance of order and WHL may refer to sales literature and materials supplied or made available by WHL on its website or otherwise as appropriate.

8.5 All payments made to WHL shall be made in full without set-off or deduction (save any deduction required by law in which event WHL may require a further payment so the net receipt equals an amount WHL would otherwise have received).

9. DAMAGE AND PILFERAGE

9.1 If on receipt by the Customer, packages, crates or goods are found to be damaged or parts missing the delivery note or receipt to carrier must be endorsed with full description of condition and claims must be notified to WHL within 3 working days of delivery. This excludes all graded units.

9.2 No claim will be considered after goods have been cut up, treated, resold, shipped, processed, installed or merged with other goods or in other circumstances when the Customer is prohibited by the contract or by law in making such claim.

9.3 The Customer has a responsibility to inspect the goods thoroughly on delivery.

9.4 Damaged or pilfered goods must be returned in no worse condition than the condition on delivery.

9.5 Where the Customer signs for goods this will be deemed to be delivery of goods undamaged and with no pilferage unless the Customer or law specifies otherwise.

10. CANCELLATION BY CUSTOMER

10.1 Cancellation will not be allowed in respect of an order tailor made to the Customers specification or in other circumstances when the Customer has a statutory right of cancellation which is no longer enforceable.

10.2 In other circumstances cancellation will be permitted at WHL' discretion or if the Customer has a statutory right of cancellation which is enforceable and is properly exercised.

10.3 Where cancellation is permitted cancellation and any returns to WHL by the Customer must be within 7 working days of delivery provided the Customer may incur a restocking charge in which event it must pay a sum confirmed in writing by WHL not exceeding 15% of net price of goods cancelled together with value added tax or other sales tax chargeable on such sum.

10.4 Goods cancelled must be returned to WHL in perfect condition with packaging intact together with invoice number and date and reason for cancellation.

10.5 A restocking charge is not inclusive of any other monies which WHL is entitled to be paid unless otherwise agreed in writing by WHL or required by law when the Customer is dealing as a consumer.

11. PAYMENTS BY CUSTOMER AND INTEREST

11.1 Payment of monies shall be made in full in sterling (£) or (if different) the currency of the invoice by a payment method acceptable to WHL not later than the date stated in the invoice or if not so stated within 30 days of the end of the month in which the date of the invoice falls unless otherwise agreed in writing.

11.2 Default in payment of any monies due shall entitle WHL, without prejudice to its other rights and remedies, to suspend or cancel any undelivered portion of any goods under the contract and any other contract with the Customer.

11.3 Without prejudice to its other rights and remedies as regards overdue monies interest will be charged by WHL at an annual rate equal to 5% above the Bank of England base rate from time to time calculated on the amount owing (before and after judgement) from due date to date of payment. WHL also reserves the right to claim interest on a statutory basis if greater than such contract rate and other statutory entitlements in respect of failure to make payment or late payment.

11.4 Time is of the essence for payment.

11.5 WHL may exercise a lien over other goods supplied by WHL belonging to the Customer where monies are due from the Customer. If this Clause 11.5 or such lien must be registered as a bill of sale or charge to be effective in law in respect of any goods then it shall not take effect in respect of the goods until registered.

11.6 Notwithstanding Clause 11.1 all monies to which WHL is entitled which are not due shall become due for payment in the event of cancellation of order and/or determination of the contract if this occurs earlier than any normal due date.

12. LIABILITY FOR LOSS AND CONSEQUENTIAL LOSS

12.1 Notwithstanding Clause 5 or any other term or provision (save Clauses 1.2 and

12.2) WHL shall not be liable to the Customer for any loss, injury or damage direct, indirect, special or consequential arising out of or caused by goods supplied by WHL or their use or resale or otherwise arising in any respect out of or in connection with the contract or its performance or failure in performance (and whether a claim arises in contract or tort (including from negligence of WHL or its officers, employees, agents or contractors for whom WHL is responsible in law) or for breach of statutory duty or misrepresentation or any cause of action).



- 12.2 Nothing in Clause 12.1 or any other term or provision of the contract shall exclude or restrict liability of a party to the other in the following circumstances:
- (i) fraud or fraudulent misrepresentation by the party;
 - (ii) personal injury or death caused by the negligence of the party or of officers, employees, agents or contractors for whom that party is responsible in law;
 - (iii) personal injury or death or any other loss or damage for which the party is responsible by virtue of the Consumer Protection Act 1987 (as amended); or
 - (iv) any liability for loss, injury or damage which cannot be excluded or limited.
- 12.3 No claim shall be made against WHL if and to the extent to which the Customer is entitled to claim under the manufacturer's warranty or an insurance policy or from a third party for the loss, injury or damage.
- 12.4 If a claim against WHL is or includes a third party claim then the Customer agrees not to admit liability or to settle or compromise the third party claim without WHL prior written consent (not to be unreasonably withheld).
- 12.5.1 Unless otherwise stated in these terms and conditions or confirmed in writing by WHL the Customer must notify any claim (actual or contingent) against WHL as soon as reasonably practicable giving reasonable details of the claim and in any event must do so within any time limit by law.
- 13. AUTHORITY AND WAIVERS**
- 13.1 No person other than the duly authorised officers or employees of WHL has authority to bind WHL or to make, vary or determine a contract or other commitment.
- 13.2.1 No failure or delay by WHL in enforcing any right or remedy shall be deemed a waiver of such right or remedy or any other right or remedy available to it. A waiver must be expressly agreed in writing by WHL and is only valid for the purposes given.
- 14. FORCE MAJEURE**
- WHL shall not be liable for any breach of contract arising out of or in consequence of Fire, Storm, Impact, Explosion, Flood, War, Riot, Civil Commotion, Government Action or Direction, Strike, Lockout or Industrial Action or unforeseen circumstances or other circumstances outside WHL' control (whether or not foreseen) affecting WHL' ability to carry on its business or to perform the contract in whole or in part.
- 15. NOTICES**
- 15.1 Any notice shall be in writing and (subject to Clause 15.2) shall be addressed to the recipient party at the address provided or such other address, fax number as may be notified for these purposes. Any notice shall be deemed served at the time of delivery if by hand or within 2 working days of being sent by first class UK post or 4 working days if sent by airmail or immediately if sent by fax if the sender has evidence of successful transmission.
- 15.2 Until alternative valid service details are provided WHL may deliver a notice or other information using the delivery address. Further details for WHL are available after request.
- 16. JURISDICTION**
- 16.1 The contract with the Customer shall be deemed made in England.
- 16.2 The contract with the Customer and any dispute or claim arising out of it or in connection with it or the subject matter or performance shall be governed by and be construed in accordance with English Law.
- 16.3 Subject to the proviso to this Clause 16.3 the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract or its subject matter or performance PROVIDED THAT it is agreed that nothing in this clause shall operate to prevent or restrict WHL from taking proceedings in any court of any other jurisdiction available to WHL in law including to enforce any judgement, order or award made in the courts of England and Wales or any other court with jurisdiction.