

## FORKWAY LIMITED CONDITIONS OF SALE

1. **GENERAL.** These conditions govern all contracts made by Forkway Limited ("the Company") for the supply of goods (which expression shall where the context so permits include contracts for the supply of units, parts, accessories, replacements, spares, goods on hire and on hire purchase and services). Unless expressly accepted by the Company in writing no condition or warranty inconsistent herewith shall apply to any such contract.
2. **ACCEPTANCE.** The Company's offers estimates and quotation are without engagement and all orders require the Company's acceptance in writing in order to create a contract. Goods and service shall be deemed to be accepted by the customer unless the company is notified in writing within 10 days of the invoice date of the grounds for any dissatisfaction.
3. **PAYMENT.** Terms of payment are strictly net at the due date for payment which shall not exceed 30 days from the date of invoice unless otherwise agreed in writing. Payment at due date is a condition precedent to subsequent delivery and time of payment is of the essence of the contract. All payments are to be made to the Company's head office (unless otherwise requested by the Company) and in the manner stipulated by the Company. Interest at the rate of 1% per month is payable upon the Company's written demand on all overdue accounts from the due date until payment. Where there is any delay in commencement of a contract hire agreement, payment will be invoiced by The Company until such time as the agreement comes into force.
4. **CANCELLATION.** In the event of this order being cancelled for any reason we reserve the right to pass on in full any cancellation charge or costs incurred by The Company.
5. **FORCE MAJEURE.** Without prejudice to its rights in the event of a breach of contract by the customer the Company reserves the right (without liability to the customer or loss or damage arising therefrom) at the Company's option to suspend delivery and/or to cancel unfulfilled parts of any contract in whole or in part by reason of act of God, war, force majeure, strikes, lockouts, restrictions on supplies government control, inevitable accident or any circumstances which may be outside its control the Company is prevented or delayed from or in performing its obligations under the contract in whole or in part. The company's liability in the event of suspension of delivery and/or cancellation of any contract in whole or part of the contract less any expense incurred by the Company down to the date of cancellation in part performance of the unfulfilled and cancelled part of the contract.
6. **DELIVERY.** Delivery dates are approximate only and without engagement, but the Company will endeavour to meet customers' requirements. Time shall not (except in respect of payment to the Company) be of the essence of any contract (nor shall the Company be under any liability for delay in delivery whether arising out of alleged negligence on the part of the Company or its servants or agents or otherwise unless otherwise expressly agreed by the Company in writing in which case the Company's liability shall be limited to such liquidated damages (if any) as may be specifically agreed. Each delivery and part delivery shall be deemed to represent a separate contract and failure of any delivery or part delivery shall not vitiate any contract in respect of any other delivery of part delivery.
7. **SPECIFICATION AND PERFORMANCE.** Details, drawings, specifications and statements as to capacity, power, out-put and suitability and otherwise issued by the Company in connection with its goods are intended to be approximate only and shall not be taken to apply to any particular goods none of which shall carry any guarantee or warranty as to quality fitness or suitability unless an express guarantee is given to the customer separately in writing in each particular case. Representations as to performance relate to what the Company would expect to obtain upon test but since goods are employed in many trades and for many purposes under varying conditions of operation the Company cannot accept liability for failure to obtain any stated performance unless an express guarantee is given to the customer separately in writing in each particular case. Where a guarantee so given is not fulfilled within a reasonable time opportunities shall first be given to the Company to comply with the terms of the guarantee. In the event that the Company fails to do so the customer may return the goods failing to comply with the guarantee, but in the case of plant consisting of several units such rights of return shall only extend to the unit which has proved deficient. The Company will then repay to the customer (without interest) the purchase price of the goods so returned, carriage paid, at the customer's risk and the Company's liability shall be fully discharged by such repayment.
8. **ON-SITE LABOUR.** Where the Company provides labour at the customer's works or on site the customer shall indemnify the Company against all loss expense and damage incurred by the Company and arising directly or indirectly from defects in or unsuitability of the works or site or of apparatus or plant provided by the customer or from negligence or breach of statutory duty on the part of the customer its employees or agents or other occupier and against all claims by third parties so arising either at common law or for breach of statutory duty.
9. **PASSING OF RISKS.** In the case of ex-works contracts or despatch of goods from the Company's works and in other cases upon arrival of goods at the place of delivery, goods shall be at the risk of the customer who shall be responsible for any loss or damage thereto however caused and whether by negligence or the Company its employees or agents or otherwise notwithstanding that property in the goods may not then have passed to the customer.
10. **PASSING OF PROPERTY.** Property in goods supplied shall not pass to the customer until fulfilment of all the customer's obligations under the contract pending which and without prejudice to the Company's rights in the event of a breach of contract by the customer the Company may by notice to the customer require redelivery of the goods carriage paid to the Company's head office and/or as agent for the customer enter the premises in which the goods are situate and remove them at the risk and expense of the customer.
11. **ACCEPTANCE.** Goods and services shall be deemed to have been accepted by the customer as being in conformity with the contract unless within a reasonable time (not in any event to exceed 90 days after the date of the passing of risk under Condition 8 above) the customer specifies in writing to the Company the customer's grounds of dissatisfaction.
12. **PRICE VARIATION.** If before delivery the Company alters its list price or any tax duty or levy fails to be added directly or indirectly to the price of goods or services the Company reserves the right to advise the customer of such alteration or addition in which event the revised price shall be deemed to be accepted by the customer unless within 14 days the customer notifies the Company to the contrary. In the event of such notification the customer shall be obliged to pay such altered or additional price to the extent to which the variation arises from variations in wages, material or other costs or from any tax duty or levy liability which has arisen since the price was fixed.
13. **VARIATION IN SPECIFICATION.** No variation in specification of any goods or services to be supplied under the contract shall invalidate the contract. Without prejudice to the generality of the provision the Company may if it makes any major alteration in the specification of goods or services to be supplied notify the customer of such variation and the revised specification shall be deemed to be accepted by the customer unless within 14 days the customer notifies the Company to the contrary in which event the Company may by notice in writing to the customer cancel the contract in whole or part in so far as it remains to be performed by the Company without liability or the part of the Company beyond repayment to the customer (without interest) of any part of the purchase price already received by the Company and attribute to any unfulfilled and cancelled part of the contract less any expense incurred by the Company down to the date of cancellation in part performance of the unfulfilled and cancelled part of the contract.
14. **LIMITATION OF LIABILITIES.** The Company shall in no circumstances be liable to any customer in respect of any claim howsoever arising (whether base on alleged negligence by the Company or its employees or agents or otherwise) for any loss or consequential loss or damage. In addition to this overriding limitation of liability, the Company's liabilities in respect of all contracts to which these conditions apply and in respect of the subject matter of every such contract shall be strictly limited to the provisions of these conditions and all other provisions representations conditions warranties and guarantees (except in so far as they are given under and in accordance with these conditions) and whether express or implied by common law, statute, trade custom or otherwise are hereby expressly excluded.
15. **ALLOWANCE FOR USED MACHINERY.** If the Company agrees to allow a deduction from the price of goods or services by reason of its taking delivery from the customer of any used machinery such used machinery shall be delivered to and accepted by the Company upon the following conditions (in addition to the conditions and warranties expressly agreed or implied by common law, trade custom or otherwise and as to quality condition fitness performance or otherwise)
  - (a) that after examination by the Company such used machinery shall be delivered to the Company in at least as good condition as it was when so examined and
  - (b) That the machinery in respect of which the customer is allowed such deduction is warranted by the customer to be his absolute property and not the subject of any hire purchase agreement or any other encumbrance whatsoever or in the alternative that if such machinery is the subject of any encumbrance the Company shall be entitled to make such payment (not exceeding the agreed allowance) in respect of the encumbrance concerned as may be requisite finally to discharge such encumbrance and the Company may then reduce the allowance to the customer in respect of such machinery by an amount equal to the amount paid in respect of the encumbrance. Provided that if before the date of delivery the goods there shall be any significant change in the market value of the used machinery agreed to be taken by the Company the agreed allowance shall not be binding on either party and the allowance to be given shall be settled by an independent valuer to be nominated by the Company.
16. **ASSIGNMENT TO THIRD PARTY.** At the request of the customer, made not later than 14 days after the date of the Company's acceptance of an order, the Company will offer to sell the ordered goods to a finance company approved by the Company at the contract price and upon these conditions of sale for the purpose of enabling such finance company to let the goods on hire purchase or on hire to the customer. The customer's liability to the Company for payment of the contract price shall then be deferred until the expiration of 21 days from the date of submission of such offer to the finance Company or until rejection of the offer by the finance company, whichever is the earlier. If the offer shall be accepted by the finance company within the 21 day period and the Company shall receive from the finance company a sum equivalent to the contract price (credit being given for any deposit paid by the customer to the Company) then (but not otherwise) these conditions of sale shall cease to have effect in so far as they require the Company to transfer to the customer the property in the goods or require the customer to pay the contract price to the company but in all other respects these conditions shall continue to apply as if the customer had purchased the goods from the company under these conditions of sale and no liability shall attach to the Company beyond that provided by these conditions.
17. **NOTICES.** Any notice hereunder may be served personally or may be left at or sent by post to any residence or place of business of the person to whom it is addressed and in the case of posting notices shall be deemed to have been served on the day following the day of posting.
18. **PROPER LAW.** English law governs all the Company's contracts all of which shall be deemed to have been made in England and the customer submits to the jurisdiction of the English Courts.