

## **Waux Ltd Terms & Conditions of Sale**

### **1. DEFINITIONS**

- “Contract” means a contract between the Supplier and the Purchaser for the sale and purchase of Goods and/or Services from time to time in accordance with these conditions.
- “Goods” means the goods (or any part of them) set out in the Order.
- “Force Majeure Event” means an event, circumstance or cause beyond a party’s reasonable control.
- “Order” means the Purchaser’s order for the Goods and/or Services, as set out in a purchase order form or the Purchaser’s written acceptance of the Supplier’s quotation, as the case may be.
- “Purchaser” means the individual, individuals, firm, or company purchasing Goods and/or Services from or otherwise dealing with the Supplier.
- “Services” means the services to be provided by the Supplier to the Purchaser as set out in the Order.
- “Supplier” means Waux Ltd, (a company registered in England and Wales with company no: 12324813) its agents and assignees.
- “Specification” means any technical specification for the Goods and/or Services, including any related plans, designs and drawings, that are approved by the Purchaser.

### **2. APPLICATION OF TERMS**

**2.1.** All quotations and price lists are given and all Orders are accepted on these conditions to the exclusion of any other terms stipulated or referred to by the Purchaser whether in the Purchaser’s Order or in any negotiations, and any course of dealing established between the Supplier and the Purchaser, or which are otherwise implied by law, trade or custom.

**2.2.** No modification of these conditions shall be effective unless specifically accepted in writing and signed by one of the directors of the Supplier.

### **3. REPRESENTATIONS**

**3.1.** The Supplier shall be under no liability whatsoever resulting from or arising out of or in connection with or in relation to any statement, report or other representation made by any of its partners, servants or agents before the Contract between the Supplier and the Purchaser was entered into, unless the Purchaser shall give notice in writing to the Supplier before the Contract is entered into that it intends to rely on any such statement, report or other representation.

**3.2.** Any samples, drawings or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier’s catalogues, brochures or on its website are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to. They shall not form part of the Contract nor have any contractual force.

### **4. ORDERS**

**4.1.** An Order constitutes an offer by the Purchaser to purchase the Goods and/or Services in accordance with these conditions. The Purchaser is responsible for ensuring that the terms of the Order and any associated Specification are complete and accurate. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Purchaser in any such event.

**4.2.** The Supplier reserves the right to accept or refuse any Order given on the basis of its quotation or otherwise and in the event of the refusal of any Order the Supplier shall not be liable for any loss or damage arising therefrom or in connection therewith or in relation thereto. The Supplier reserves the right to refuse to accept Orders less than £100 in value before carriage.

**4.3.** An Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or despatches the Order (whichever occurs earlier), at which point a Contract shall come into existence.

**4.4.** Where an Order is placed for a structure, it is placed by the Purchaser on the basis that liability for the design is the full responsibility of the Purchaser and the Supplier accepts no liability for any fault with such design.

### **5. QUANTITIES**

**5.1.** Some Goods are sold by weight based upon the Supplier’s experience and knowledge that those Goods when sold by weight will equal a certain quantity. In cases where the Purchaser orders a quantity of such Goods which are sold by weight the Supplier gives no guarantee or warranty that the precise number of items will be supplied.

**5.2.** Many Goods are supplied to the Supplier by manufacturers in pack quantities. The Supplier gives no guarantee or warranty that such quantities are accurate and accepts no responsibility for any discrepancies. Any pack quantities stated are approximate and may change without notice.

## **6. THE GOODS AND SERVICES**

**6.1.** The Supplier warrants that on delivery the Goods shall:

- a.** conform in all material respects with any Specification; and
- b.** be free from material defects in material and workmanship.

**6.2.** In relation to the Goods, the Supplier offers a manufacturer's warranty in accordance with its warranty policy set out at: [www.waux.co.uk/warranty/](http://www.waux.co.uk/warranty/)

**6.3.** The Supplier shall have no responsibility for providing any guard or protection necessary to comply with any statutory requirements in connection with any of the Goods.

**6.4.** Changes may occur to sizes and specifications of Goods and in this event the Supplier may provide an approximate equivalent.

**6.5.** The Supplier shall supply the Services to the Purchaser in accordance with any Specification and with reasonable care and skill.

## **7. PRICES, QUOTATIONS AND PAYMENTS**

**7.1.** Goods and/or Services will be invoiced and shall be paid for at the price set out in the Order, or if no price is quoted, the prices ruling at the time of despatch or delivery of the Services. Any price list provided by the Supplier is for guidance only and all prices are subject to variation at any time without notice to the Purchaser. Unless otherwise stated all prices are exclusive of VAT.

**7.2.** For Purchasers who have an approved monthly account, payment for stock items is due at end of month following date of invoice.

**7.3.** All Goods specially manufactured will require an up-front deposit of at least 50%, to be determined as per the quotation.

**7.4.** The Supplier reserves the right to invoice and/or demand payment of the full price of the Goods and/or Services at any time.

**7.5.** The Supplier shall be entitled to recover all fees, commissions and other payments incurred from third parties in respect of recovery of any overdue debt owed by the Purchaser. The Supplier shall also be entitled to a fee of 1% of the outstanding debt with a minimum fee of £40.00 to recover the Supplier's internal overheads in following up the outstanding debt.

**7.6.** The Purchaser shall pay each invoice submitted by the Supplier by the due date stipulated on either the Order or the Supplier's invoice or, where there is no such due date, 30 days from the date of the invoice. Time for payment shall be of the essence of the Contract.

**7.7.** If any payment due under the Contract is not paid in full by the due date for payment, the Supplier reserves the right to charge interest on the outstanding balance at 4% above HSBC Bank base rate, or the statutory rate of interest if higher. Interest may be charged from invoice date.

**7.8.** All amounts due under a Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**7.9.** Any invoice queries or disputes must be notified to the Supplier within 7 days of the invoice date, either by phone, email to [accounts@waux.co.uk](mailto:accounts@waux.co.uk) or by post. If no queries or disputes are notified to the Supplier, invoices will remain payable in full, as do all undisputed parts of any invoice. The Supplier will always try to resolve any queries or disputes promptly.

## **8. RETENTION OF TITLE**

**8.1.** The title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Purchaser until all sums owed to the Supplier on any account whatsoever have been paid for in full in cash or cleared funds. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Supplier and the Purchaser. Until such time the Purchaser agrees:

- a.** to maintain the Goods in satisfactory condition and insure the Goods against all risks for their full price with an insurance company of repute;
- b.** the Purchaser shall store the Goods separately from other Goods or shall in some other way ensure that the Goods are readily identifiable as the property of the Supplier;
- c.** to notify the Supplier immediately if it becomes subject to any of the events listed in 13.1(c) – (e);
- d.** to keep and retain the Goods free from any charge, lien, or other encumbrance thereon;
- e.** that if the Purchaser shall resell the Goods it does so as principal and not as the Supplier's agent;
- f.** if so required by the Supplier, to register a formal charge in favour of the Supplier in the form recognized by the Companies Act 2006.

**8.2.** At any time before title to the Goods passes to the Purchaser, the representatives of the Supplier shall be entitled to all rights of access to the premises of the Purchaser where the Goods are stored, or the Supplier believes the Goods to be stored, for the purpose of repossessing the Goods.

**8.3.** In the case of fungible Goods, any Goods which match the invoice description shall be regarded as the property of the Supplier.

## **9. DELIVERY & RISK**

**9.1.** The Supplier shall deliver the Goods to the location set out in the associated Order or such other location as the parties may agree at any time after the Supplier notifies the Purchaser that the Goods are ready. Unless otherwise agreed in writing, the Purchaser is responsible for any offloading required.

**9.2.** Unless otherwise agreed all Goods for delivery will be despatched by the conveyance of the Supplier's choice. Where the Purchaser requires a different means of conveyance any cost must be paid by the Purchaser and the Supplier shall invoice the Purchaser for the same.

**9.3.** Whilst commercially reasonable efforts will be made to avoid delay, the Supplier has no responsibility for meeting any specific delivery dates. Accordingly, no liability will be accepted for any direct or indirect loss which may be caused by delayed delivery. Time of delivery shall not be of the essence of the Contract.

**9.4.** Risk in the Goods shall pass to the Purchaser on delivery.

**9.5.** The Supplier reserves the right to charge carriage to all destinations outside mainland England and Wales.

**9.6.** Claims for damaged in transit Goods may only be accepted if signed as such on receipt and notified to the Supplier immediately. Missing Goods should be notified to the Supplier in writing enclosing a copy of the delivery note within three days of delivery.

**9.7.** If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the applicable Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**9.8.** If the Purchaser fails to take delivery of the Goods within three business days of the Supplier notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- a.** delivery of the Goods shall be deemed to have been completed at 9.00 am on the third business day after the day on which the Supplier notified the Purchaser that the Goods were ready; and
- b.** the Supplier shall store the Goods until actual delivery takes place and charge the Purchaser for all related costs and expenses (including insurance).

**9.9.** If ten business days after the day on which the Supplier notified the Purchaser that the Goods were ready for delivery the Purchaser has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.

**9.10.** The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

## **10. RETURNED GOODS**

**10.1.** Subject to 10.4 below, Goods may be returned to the Supplier for credit or exchange for up to ten working days after the date of delivery provided that the delivery note, or invoice number is quoted.

**10.2.** Save for Goods returned under the Warranty Policy, and subject to clause 10.5 below, returned Goods will only be accepted by the Supplier if they are in a sound and resaleable condition. Whether Goods are sound and resaleable shall be for the sole decision of the Supplier. Any Goods which the Supplier deems to be not re-saleable will only be returned to the Purchaser at the specific request of the Purchaser and at the Purchaser's expense. Notwithstanding the discretion of the Supplier in deciding whether Goods are sound and resaleable, Goods will not be deemed resaleable if they are returned in anything but their original packaging or the quantities of the Goods returned are different from those originally supplied. It is the responsibility of the Purchaser to ensure returned Goods are well packed as credit may be refused for Goods damaged on the return journey.

**10.3.** Where Goods returned for credit or exchange are Goods which have been supplied in boxes or in quantities, credit notes or exchange of Goods will only be given if the Goods are returned in their boxes and/or in the same quantities supplied to the Purchaser. Credit notes will normally only be issued if the Supplier's collection note has been issued to the Purchaser.

**10.4.** Save for Goods returned under the Warranty Policy, the Supplier reserves the right to make a charge for handling and restocking equal to 35% of the sale price of the Goods returned plus the return carriage charge.

**10.5.** Non-stock Goods especially obtained for the Purchaser, and specially manufactured Goods, may not be returned for credit or exchange.

**10.6.** When making a request to return products to the Supplier, Purchaser should adhere to the following timescales: Shortage and damaged Goods 24 hours if signed as such on receipt; Picking errors (i.e. wrong Goods) 3 working days; Faulty Goods 3 working days; Goods no longer required 10 working days.

**10.7.** Purchaser should always obtain a signature (i.e. proof of collection) from the person collecting Goods for return.

## **11. AUCTION**

**11.1.** Auction items are considered clearance, discontinued items and are sold as seen. All auction Goods are un-returnable unless they are faulty.

**11.2.** Won auction items must be paid for within 24 hours of receiving the invoice.

## **12. LIMITATION OF LIABILITY**

**12.1.** References to liability in this clause 12 include every kind of liability arising under or in connection with a Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**12.2.** Nothing in these terms limits any liability which cannot legally be limited, including liability for:

- a.** death or personal injury caused by negligence;
- b.** fraud or fraudulent misrepresentation;
- c.** breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- d.** defective products under the Consumer Protection Act 1987.

**12.3.** The Supplier's total liability to the Purchaser under a Contract shall not exceed the amount paid to the Supplier under that Contract.

**12.4.** Subject to clause 12.2, the following types of loss are wholly excluded:

- a.** loss of profits;
- b.** loss of sales or business;
- c.** loss of agreements or contracts;
- d.** loss of anticipated savings;
- e.** loss of use or corruption of software, data or information;
- f.** loss of or damage to goodwill; and
- g.** indirect or consequential loss.

**12.5.** This clause 12 shall survive termination of these terms and any Contract.

## **13. TERMINATION**

**13.1.** Without limiting its other rights or remedies, the Supplier may terminate a Contract with immediate effect by giving written notice to the Purchaser if:

- a.** the Purchaser fails to pay any amount due under that Contract on the due date for payment;
- b.** the Purchaser commits a material breach of any term of these terms and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- c.** the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- d.** the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- e.** the Purchaser's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to these terms is in jeopardy.

**13.2.** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or Services under a Contract or any other contract between the Purchaser and the Supplier if the Purchaser becomes subject to any of the events listed in clauses 13.1 c) to 13.1 e), or the Supplier reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under a Contract on the due date for payment.

**13.3.** On termination of a Contract for any reason the Purchaser shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Purchaser immediately on receipt.

**13.4.** Termination of a Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of these terms which existed at or before the date of termination.

**13.5.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **14. GENERAL**

**14.1. Data Protection.** All personal data will be processed in accordance with applicable data protection legislation and the Supplier's privacy notice a copy of which can be found at: <https://www.waux.co.uk/privacy-policy/>

**14.2. Force majeure.** Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate any affected Contract by giving 7 days' written notice to the affected party.

**14.3. Assignment.** The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Purchaser may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

**14.4. Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**14.5. Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**14.6. Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**14.7. Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and may be sent by email by each party to the email addresses notified to it by the other party from time to time. Any notice sent by email shall be deemed delivered at the time of transmission or, if this time falls outside of the Supplier's business hours, when its business hours resume.

**14.8. Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**14.9. Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**14.10. Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or their subject matter or formation.