

TRANSXL INTERNATIONAL LIMITED GENERAL CONDITIONS OF SALE

NOTE: THESE TERMS AND CONDITIONS DO NOT APPLY WHERE TRANSXL INTERNATIONAL LTD DEALS AS AGENT ONLY, IN THIS CASE THE TERMS AND CONDITIONS OF THE PRINCIPAL SUPPLIER WILL APPLY

1. INTERPRETATION

In these Conditions:

- "Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller
- "Competent Health and Safety Officer" means the person appointed for the purpose by the Buyer
- "Conditions" means the standard terms and conditions of sale set out in this document and unless the context otherwise requires including any special terms and conditions agreed in Writing between the Buyer and the Seller;
- "Contract" means the contract for the purchase and sale of the Goods (together with associated services where appropriate) and
- "Goods" means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these conditions and where the context requires shall include associated services)
- "Health and Safety Legislation" means The Health and Safety at Work Act 1974, The European Communities Act 1972, The European Community Directive 1993/68EC and all statutory instruments regulations and other subsidiary or subordinate legislation made pursuant to any of them and all approved codes of practice issued pursuant thereto.
- "Seller" **TRANSXL INTERNATIONAL LIMITED** (registered in England under number 1168886)
- "Writing" includes telex cable facsimile transmission and comparable means of communication Provided that any communication by facsimile transmission shall be followed by a hard copy thereof sent by post.

2. BASIS OF SALE

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written offer of the Seller which is accepted by the Buyer subject in either case to these conditions which supersede any earlier conditions appearing in the Seller's catalogue or elsewhere and which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is, accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer. The payment by the Buyer of a deposit in respect of any Goods which are accepted by the Seller by the return of the Seller's proforma invoice relating thereto shall be deemed to be an acknowledgment and acceptance by the Buyer that the purchase of the Goods by it shall be on the terms set out in these Conditions. The Seller shall be at liberty to amend the description of the Goods only set out in the said proforma invoice if and to the extent that it is necessary to ensure that the same is consistent with any letter of credit issued by the Buyer to the Seller and the Buyer shall be deemed to have authorised the Seller to make such alteration.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 The Buyer and the Seller accept and acknowledge that the Goods are second-hand and/or refurbished and adapted to the Buyer's requirements in the specification provided by the Buyer
- ## **3. ORDERS AND SPECIFICATIONS**
- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until written confirmation accompanied by a pro-forma invoice is sent to the Buyer by the Seller.
- 3.2 The description of and any specification for the Goods shall be those set out in the Seller's offer (if accepted by the Buyer).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damage costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification
- 3.4 No order that has been accepted by the Seller may be cancelled by the buyer except with the agreement in writing of the Seller and on the terms that any deposit received from the Buyer shall be forfeited and that the Buyer shall further indemnify the Seller in full against any loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation where these exceed the amount of any deposit.

4. PRICE OF THE GOODS

- 4.1 The price of the Goods shall be the Seller's price. All prices quoted are valid for 30 days unless otherwise stated or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor which is beyond the control of the Seller (such as without limitation any foreign exchange, fluctuation, currency, regulation, alteration of duties, significant increase in the cost of labour materials or other costs of manufacture) any change in delivery date quantities or specification of the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any offer or in any proforma invoice of the Seller and unless otherwise agreed in Writing between the Buyer and the seller all prices are given by the Seller on an "ex-works" basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance if the Buyer asks the Seller to arrange such insurance and the Seller agrees to do so.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay.

5. TERMS OF PAYMENT

- 5.1 Full payment shall be made by the Buyer against the pro-forma invoice prior to collection or delivery of the Goods.
- 5.2 The Seller shall be entitled to recover the price of the Goods (plus value added tax) notwithstanding that property in the Goods has not passed to the Buyer
- 5.3 If the Buyer fails to make payment then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer.
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract between the buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer)

6. DELIVERY

- 6.1 Delivery of the Goods shall be taken by the Buyer within the period (if any) stated in the proforma and shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection
- 6.2 Any dates quoted for delivery or collection of the Goods are approximate and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.
- 6.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may after a period of 4 weeks:

- 6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs including insurance of storage and shall be entitled to apply to such charge any deposit already received from the Buyer or
- 6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods (but not to title thereto) shall pass to the Buyer:-
- 7.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection *even* if at that time the Buyer has not paid the Seller in full for the Goods or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises at the time of actual delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the goods
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

8. LIABILITY

- 8.1 The Seller affords the Buyer the opportunity to carry out a full inspection of Goods before delivery or collection at the Seller's premises (or at some other place if agreed). If the Buyer does not take the opportunity to inspect the goods before delivery or collection they shall be deemed in all respects to be in accordance with the Contract and the Buyer shall be bound to accept and pay for them.
- 8.2 The Buyer accepts and acknowledges that the Seller did not design or manufacture the Goods and they are purchased strictly *as seen* and all warranties conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law and the Seller shall not be liable to the Buyer in respect of any failure on the part of the Seller to comply with any obligation which it may have and no other warranty express or implied whatsoever shall be given or be deemed to have been given by the Seller to the Buyer to any person by reason of any Health and Safety Legislation.
- 8.3 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under any statutory or subordinate legislation or under the express terms of the Contract for any consequential loss or damage (whether for loss profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller or its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer
- 8.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of Contract by reason at any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:-
- 8.4.1 Act of God explosion flood tempest fire or accident
- 8.4.2 War threat of war sabotage insurrection civil disturbance or requisition
- 8.4.3 acts restrictions regulations by laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 8.4.4 import or export regulations or embargoes
- 8.4.5 strikes lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)
- 8.4.6 difficulties in obtaining raw materials labour fuel parts or machinery
- 8.4.7 power failure or breakdown in machinery
- 8.5 Whether the Goods are sold "as seen" or "as is" where any claim is made by the Buyer and accepted by the Seller who confirms in writing that it has so accepted such claim (but not otherwise) under the Contract the Seller shall at its sole discretion be entitled to replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price) but in exercising its discretion shall incur no liability to the Buyer

9. INDEMNITY

- 9.1 It is a condition of this Contract that before delivery or collection of the Goods the Buyer shall provide the Seller with a written undertaking and the Buyer acceptance of the Contract shall be deemed in any event to constitute such undertaking given to the Seller by the Buyer that he will arrange for the Goods and any installation of the Goods to be inspected by a competent Health and Safety Officer.
- 9.2 The Buyer agrees that he will take all steps necessary to ensure that the Goods will be safe and without risk to health when used and the Seller is relieved from any duty under the Health and Safety at Work etc Act 1974 or any regulations made thereunder and any equivalent legislation which applies in the Buyer's country of origin
- 9.3 No Warranty whatsoever is given by the Seller that the Goods comply with the statutory requirements of the Health and Safety at Work etc Act 1974 or any regulations made thereunder and the Buyer shall fully indemnify the Seller against all costs or claims arising from breach of any statutory duty under such Health and Safety legislation.

10. INSOLVENCY OF BUYER

- If this clause applies then without prejudice to any other remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary in the following events and in all circumstances (including the insolvency of the Buyer) shall be entitled to obtain any deposit which the Buyer may previously have paid
- 10.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (other than for the purposes of reconstruction or amalgamation) or
- 10.2 an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer or
- 10.3 a winding up petition (if a company) or a bankruptcy petition (if an individual) is presented against the Buyer
- 10.4 the Buyer ceases or threatens to cease to carry on business
- 10.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

11. GENERAL

- 11.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing and addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 11.3 If any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the condition in question shall not be affected thereby
- 11.4 The Contract shall be governed by the laws of England and any dispute arising under or in connection with these conditions shall be subject to the jurisdiction of the English courts.