

CONDITIONS OF SALE

1. GENERAL

These conditions of sale shall form part of every contract between Gem Rewinds Limited ("the seller") and the Buyer for the sale and purchase of goods supplied by the seller ("the goods"). The placing of an order by the Buyer for the sale and purchase of the goods is an acceptance and acknowledgment by the buyer that if the order is accepted these conditions shall apply and shall supersede all previous negotiations and representations. No terms or conditions imposed by the buyer and no addition to or variation of these conditions shall have effect save to the extent that they are expressly agreed to in writing and signed by the duly authorized representative of the seller.

2. Quotations and Acceptance of Orders

- a) Any quotation given by the Seller constitutes an invitation to treat and is given subject to these Conditions. Quotations shall remain valid for a period of 30 days from the date of quotation inclusive, subject to (b) below and to any revision in price referred to in paragraph 4 (a) below.
- b) No contract shall arise between the Seller and the Buyer unless and until a firm order by the Buyer has been accepted in writing by the Seller on the Seller's acceptance of order form.
- c) No addition to an order shall be made by the Buyer after the acceptance by the Seller of the order to which addition relates. Any purported addition shall be treated as a separate order at the time it is made and priced accordingly.

3. Descriptions, Drawings, Specification etc.

All descriptions, drawings, sketches, photographs, illustrations, diagrams, specifications, representations and other particulars relating to the Goods and whether furnished by the Seller to the Buyer in catalogues, press releases or elsewhere (whether verbally or in writing) are given for information purposes only and are not binding whether contractually or otherwise on the Seller.

4. Price

- a) The price of Goods shall be in accordance with the Seller's current list price for such goods ruling at the date of the contract, or in accordance with the quotation of a firm order is received and accepted within the quotation period referred to in paragraph 2(a) above. The price stated in the said current list price or quotation shall be subject to variation at the sole discretion of the Seller at any time before delivery of the Goods if there is any increase in the cost to the Seller of importation, manufacture, processing, packaging or transportation of the Goods or any part thereof or if the Seller would otherwise suffer loss as a result of currency fluctuation.
- b) Unless either the respective cost duty, charge or tax is expressly included in a quotation which has given rise to a contract within the quotation period referred to in paragraph 2(a) above or in the case of delivery of the Goods outside the United Kingdom payment by the Buyer of such cost, charge or tax is inconsistent with the provisions of INCOTERMS 1980 FOB as amended from time to time the Buyer shall in addition to the price of the Goods pay (i) the cost of packing and packaging the Goods; (ii) the cost of carriage (including loading and unloading) of the goods; (iii) the cost of insurance of the goods during transit; (iv) the amount of Value Added Tax payable in respect of the Goods and any additional costs charged under the sub-paragraph; and (v) all other duties, charges and taxes (if any) on or in relation to the Goods.

5. Payment

- a) Liability for payment of Goods supplied shall arise on delivery of the Goods in accordance with paragraph 6 below and unless other arrangements have been agreed in writing and signed by a duly authorized representative of the Seller payment shall be made in cash and within 30 days from the date of the invoice. All payments shall be made to the Seller at its address overleaf. Where payment is tendered by cheque or other negotiable instrument the Seller shall not have been paid the amount tendered until the cheque or other instrument has been honoured and the amount credited to the Seller's bank account. The Seller shall be entitled to sue for the price of the Goods and all additional charges due under the contract whether or not property in the Goods shall have passed to the Buyer in accordance with paragraph 9 below.
- b) Sums unpaid after the due date shall bear interest until the day payment is received at the rate of 3% per annum over the base lending rate from time to time of HSBC Bank plc such interest to run from day to day and to accrue after as well as before any judgment.
- c) Without prejudice to any other rights or remedies of the Seller, any default by the Buyer in making payment of the full amount becoming payable on the due date shall entitle the Seller to suspend deliveries and where appropriate the performance of repair and modification services under this or any other contract with the Buyer so long as the default continues and to treat this contract as repudiated by the Buyer and determined of the Buyer shall not within fourteen days of receiving written notice from the Seller have paid all sums due to the Seller under this contract.
- d) No payments may be withheld by the Buyer for any reason nor may any counterclaim of the Buyer be set off against any payment due under the contract without the written consent of the Seller.
- e) All payments are to be made in the United Kingdom in the currency quoted in the contract free of all costs, charges, or deductions whatsoever.
- f) The Seller shall have a general lien on all goods and property of the Buyer in the Seller's possession until payment is made in full and shall be entitled on the expiration of fourteen days notice given any time after payment has fallen due to dispose of such goods or property as the Seller thinks fit and apply any proceeds towards such debts.

6. Delivery

- a) Save in the case of delivery of the Goods outside the United Kingdom in which event SUBJECT ALWAYS to the proviso that property in the Goods shall pass only on the terms of paragraph 9 delivery shall be on the terms of INCOTERMS 1980 FOB as amended from time to time delivery shall take place when the Goods are delivered to and unloaded at the Buyer's agreed premises and the Buyer shall assist the Seller in unloading Goods delivered at the Buyer's agreed premises will be dispatched by any means of transport at the Seller's option. It is an implied condition that where the Seller delivers goods to the Buyer's agreed premises, adequate facilities exist for delivery by the means of transport chosen by the Seller and for unloading. If the Buyer collects or arranges collection of the Goods from the Seller's premises, delivery shall instead take place when the Goods are loaded on to the collection vehicle provided by the Buyer or its agent. If delivery is to be made at the premises of the Seller's warehouse man or other bailee, sufficient delivery shall be made by the delivery to the Buyer or person acting on behalf of the Buyer of the Seller's authorization to the Seller's warehouse man or bailee for the release or delivery of the Goods.
- b) Any delivery dates requested by the Buyer or estimated by the Seller are approximate only and time of delivery shall not be of the essence. The Seller will use its reasonable endeavours to deliver in accordance with the delivery schedule but shall not be liable for any delay in delivery or non-delivery.
- c) On notification by the Seller that the Goods are ready for dispatch, the Buyer shall accept immediate delivery or in the case of delivery at the Seller's premises shall arrange for immediate collection of the Goods, failing which the Seller:-
 - (i) may wither effect delivery by whatever means it thinks most appropriate or arrange storage at the Buyer's risk and expense pending delivery; and
 - (ii) may at any time re-sell or otherwise dispose of the Goods or part of them without prejudice to any other rights the Seller may have against the Buyer for breach of contract or otherwise.
- d) The Seller shall be entitled to increase the price payable for the Goods to recover any additional costs arising from any variation of delay in delivery occasioned by the Buyer's instructions or lack of instructions. The provisions of paragraph 5 above relating to payment shall apply to such additional costs.
- e) The Seller shall be entitled to deliver the Goods by installments and in such case each installment shall constitute a separate contract and in any such failure or defect in delivery of any one or more installment shall not entitle the Buyer to repudiate the contract as a whole nor to cancel any subsequent installment.
- f) The Buyer shall not be entitled to reject the Goods or part by reason only of short delivery.
- g) Where the Buyer collects or arranges collection of the Goods from the Seller's premises, entry of any vehicle of the Buyer or its agent on to the Seller's premises shall be at the sole risk of the Buyer or its agent save to the extent that any claim arises from the Seller's negligence resulting in personal injury or death.

7. Duty of Care of Buyer

- (1) The Buyer shall take all such steps as are reasonably practicable or usual to eliminate or reduce any risk to health and/or safety to which use or storage of the Goods may give rise.
- (2) Where the Goods are manufactured to a design supplied by the Buyer, the Seller shall not be liable in any way whatsoever whether in contract, tort or otherwise for any loss or damage (direct, indirect, consequential, or otherwise) arising out of or in connection with the suitability and/or desirability of the said design/manufacture and the Buyer shall indemnify the Seller against all claims of whatsoever nature relating to any infringement of patent or any other industrial property right in respect of goods, designs, specifications or instructions furnished by the Buyer to the Seller in connection with the manufacture of the goods.
- (3) The Buyer shall where the Goods are manufactured to its design comply with all the duties imposed by Section 6 of the Health and Safety at Work Act 1974 on designers, and further shall comply with all other duties which may be incumbent upon it by statute or common law in respect of the design, manufacture, use, storage or supply of the Goods.
- (4) The Buyer shall indemnify the Seller against any claim, proceedings, costs, loss, expense, damage or liability suffered by the Seller arising directly or indirectly as a result of any failure by the Buyer, its employees or agents to comply with the undertakings and duties referred to in this paragraph 7 and sub-paragraph 8(f) or as a result of the unsuitability or undesirability of any such design/manufacture as is referred to in sub-paragraph 7(2).

8. Warranties

- (a) All conditions and warranties given by the Seller whether express or implied by statute, common law, trade usage or otherwise together with all other legal obligations of the Seller howsoever arising shall be construed subject to these Conditions and insofar as they are inconsistent with these Conditions shall be excluded so far as is permitted by law. For the avoidance of doubt where the Buyer is a consumer and the Goods are supplied pursuant to a consumer transaction (as both are defined in the Consumer Transactions [Restrictions on Statements] Order 1976) his statutory rights are not affected.
- (b) The Seller's only obligations in relation to the Goods are listed and defined in sub-paragraphs 8(c), 8(d), 8(e), 8(f) and 8(g).
- (c) The Seller warrants as follows: -
 - (i) that as at the time of their delivery the Goods shall be free from any damage (which for the purpose of this warranty does not include defects in materials or workmanship) which would prevent them from being as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect in all the circumstances; and
 - (ii) that the Goods shall be free from defects in materials or workmanship (which for the purpose of this warranty does not include damage) for a period of 12 months from the date of delivery.
- (d) The Seller's liability under the warranties in (c) above is limited to the price invoiced/to be invoiced for the Goods PROVIDED ALWAYS THAT the Seller shall have the option to correct any damage/defect or to replace the Goods which correction/replacement when carried out shall have satisfied the full extent of the Seller's obligations under the warranties and the Seller shall be entitled to retain the price paid by the Buyer for the Goods or in the event that the price has not been paid or invoiced to call or invoice for the price of the Goods. Upon the exercise of the aforesaid option the Buyer of so requested by the Seller shall return the damaged or defective Goods at the Buyer's risk and cost to such premises as the Seller shall designate or if so requested shall offer the Seller the opportunity to work on the Goods at the Buyer's premises.
- (e) The warranties in (c) above shall not in any event apply to the extent that: -
 - (i) the alleged damage or defect is caused by accident or normal wear and tear or by any act, default or misuse of the Goods by the Buyer or any third party or by failure to follow any instructions supplied with the Goods;
 - (ii) the Goods have been used in conjunction with equipment or materials the specification of which has not been approved in writing by the Seller;
 - (iii) the Goods have been altered, modified or repaired other than at the Seller's premises or by a third party not expressly nominated or approved in writing by the Seller;
 - (iv) any one or more of the items constituting the Goods has/have not been manufactured by the Seller; in respect of the item(s) not so manufactured the Seller shall so far as it is able extend to the Buyer the benefits of any rights the Seller may have against the manufacturer or intermediate supplier of such item(s);
 - (f) The Buyer undertakes to examine the Goods upon delivery and within 7 days following delivery to notify the Seller of any claim it may have under the warranties in (c) above in respect of any apparent damage or defect. The Buyer further undertakes to notify any claim it may have under the warranties in (c) above in respect of any damage or defect not apparent on examination upon delivery to the Seller within 14 days of the damage or defect becoming apparent to the Buyer. The Buyer acknowledges that in the interests of certainty it shall be deemed to have waived any such claim not so notified within the 7 or 14 day period as aforesaid.
 - (g) The Seller's obligations in paragraph 8 shall so far as is permitted by law constitute the full extent of the Seller's liability in respect of any loss or damage sustained by the Buyer whether caused by (i) breach of this contract; or (ii) misrepresentation; or (iii) negligence of the Seller, its employees or agents or arising from any other cause whatsoever, and the Seller shall not in any event (even under the specific obligations undertaken herein) be liable for any consequential, economic, or other direct or indirect loss suffered by the Buyer which shall have been caused by or shall have arisen out of any one or more of the foregoing even if brought to the Seller's attention.

9. Property and Risk

The Seller and the Buyer agree that until the Seller has been paid in full for the Goods: -

- (a) The Goods shall remain the property of the Seller and the Buyer shall hold the Goods as a bailee of and be fully accountable to the Seller in respect thereof (although the risk in the Goods shall pass to the Buyer when delivery is made in accordance with paragraph (6) until such time as the sums owing to the Seller by the Buyer under this contract have been paid;
- (b) The Buyer shall be entitled in the normal course of its business unless and until the happening of any of the events set out in sub-paragraph (f) below when such entitlement shall cease to use the Goods or to convert the Goods into other products (with the addition of its own goods or those of others) or to use the Goods as materials for other products (with or without addition) or to carry out work on the Goods, but if the Buyer does any of these upon such use, conversion, use as materials for other products or carrying out of work the property in the Goods shall remain with the Seller and property in the said other products (if any) shall be vested in the Seller and the Buyer as bailee of the Goods, and the said other products shall store the Goods and such other products for the Seller in a proper manner without charge to the Seller and in such a way that they are clearly identifiable as the property of the Seller until all sums owing to the Seller by the Buyer under this contract have been paid PROVIDED ALWAYS THAT the obligation to store shall be subject to and shall not hinder the Buyer's right to use the Goods;
- (c) Without prejudice to the Buyer's fiduciary obligations to the Seller as a bailee of the Goods or such other products the Buyer shall have the right to dispose of the same in the course of its business for the account of the Seller and to pass good title to the Goods and such other products to its customers being a bona fide purchases for value without notice of the Seller's rights;
- (d) In the event of such disposal the Buyer shall have the fiduciary duty to the Seller to account to the Seller for the proceeds and for such purpose the Buyer shall if so required by the Seller pay the same into a bank account in the name of the Buyer separate from all other monies of the Buyer and held in such account for the benefit of the Seller, but on terms that so long as this Agreement subsists the Buyer shall be entitled to retain any excess in such account over the amount due from the Buyer to the Seller hereunder. The Seller shall have the additional right to recover the Buyer's price from the Buyer's customer to the extent unpaid. If the Seller avails itself of such latter right the Seller shall account so long as this Agreement subsists to the Buyer for any such excess as aforesaid less any expenses incurred by the Seller in or on account of the recovery;
- (e) Upon the happening of any of the events set out in sub-paragraph (f) below the Buyer's authority to sell the Goods shall end and all goods belonging to the Seller shall be delivered to the Seller and all proceeds of the sale of the Goods made by the Buyer prior to the withdrawal of authority shall be paid to the Seller.
- (f) The events referred to in sub-paragraphs (b) and (e) above are: -
 - (i) The insolvency of the Buyer within the meaning of Section 61 (4) of the Sale of Goods Act 1979;
 - (ii) Any notice to the Buyer that a receiver or manager is to be or has been appointed over all or any part of its assets;
 - (iii) Any notice to the Buyer that a petition to wind up the Buyer is to be or has been presented or the issue of any notice convening a meeting of the Buyer at which a resolution is to be proposed to wind up the Buyer (save for the purposes of and followed by a bona fide reconstruction or amalgamation);
 - (iv) A decision by the Buyer that the Buyer intends to make an arrangement with its creditors;
 - (v) Any other act of bankruptcy by the Buyer as defined by section 1 of the bankruptcy Act 1914 or which would be an act of bankruptcy if the Buyer were an individual;
 - (vi) Any event or default which would cause the Seller reasonably to consider that its title to the Goods or the proceeds of sale thereof may be adversely affected.
 - (vii) any event equivalent to or additional but similar to or which has taken the place of any of the above listed events under any modification or re-enactment of the relevant legislation at the date hereof for the time being in force which shall include (but without prejudice to the generality of the foregoing) the arising of circumstances which would entitle a petition for a bankruptcy order in respect of the Customer to be presented if the Customer were an individual.
- (g) The Buyer shall notify the Seller forthwith of the happening of any of the events referred to in sub-paragraph (f) above.

10. Termination, Cancellation and Suspension

(a) If the Buyer shall not comply with any of its obligations to the Seller under this or any other contract upon occurrence of any of the events referred to in paragraph 9(f) above the Seller shall have the right forthwith to terminate this and/or any other contract with the Buyer or to suspend performance of this and/or any other contract with the Buyer or any part thereof but without affecting any other claim, right or remedy of the Seller against the Buyer.

(b) Except where the Buyer is so entitled under the terms of this or any other contract between it and the Seller if the Buyer shall purport to cancel or suspend the whole or any part of any contract with the Seller the Seller may by notice in writing to the Buyer elect to treat the contract as repudiated and on receipt of such notice the Buyer shall be liable to pay to the Seller by way of liquidated damages a sum equal to all expenses incurred by the Seller in connection with the contract including an appropriate amount in respect of administrative overheads, costs and loss of profit. The Seller's estimates of the expenses incurred shall be final and binding on the parties.

(c) If for any cause whatsoever beyond its control (including but without limitation to the generality of the foregoing strikes, lock-outs or other industrial action whether involving the Seller's employees or otherwise) the Seller is unable to make any delivery on the applicable delivery date or perform any of its other obligations under the contract the Seller may terminate or suspend performance of the contract in respect of any one or more deliveries without liability for any direct, indirect, consequential or any other loss or damage thereby incurred by the Buyer. In such circumstances the Buyer shall pay the full contract price for all Goods supplies, work done and materials used by the Seller to the actual date of such termination or suspension.

(d) If for any cause whatsoever beyond its control the Seller's normal production of goods required for the performance of the contract with the Buyer and other comparable contract is reduced, the Seller may proportionately reduce the quantities to be supplied to the Buyer without incurring liability for any loss or damage thereby incurred by the Buyer.

11. Tolerances

The Seller shall be entitled to claim reasonable tolerance in respect of the Goods and reserves the right to make adaptations to the products supplied by it due to technical developments. The Seller gives no condition or warranty that the Goods are fit for any particular purpose for which the Buyer may require the same and the Buyer shall satisfy itself prior to ordering the Goods that the Goods are fit and suitable for the purpose or purposes for which the Buyer requires them.

12. Waiver

No waiver by the Seller or any breach or obligation of the Buyer pursuant to this contract shall constitute a waiver of any other prior or subsequent breach or obligation.

13. Samples and Descriptions

(a) The provision by the Seller of samples for analysis by the Buyer or the inspection of samples by the Buyer shall not render any sale a sale by sample.

(b) No guarantee or warranty is given that supplies will correspond exactly to the description or sample and the use of any description or sample shall not constitute the contract a sale by description or sample or a sale by sample and description.

14. Non-assignment by Buyer

The Buyer shall not be entitled to assign sub-let or transfer the benefit or burden of this contract or any part to any other party without the prior written consent of the Seller. The Seller shall be entitled to assign and/or sub-let and/or transfer the benefit and/or burden of this contract or any part to any other party without the consent of the Buyer.

15. Survival of Provisions

The expirations or determination of this contract, howsoever arising, shall be without prejudice to any provisions of the contract (including these conditions) which are to have effect after the date of expiration or determination.

16. Proper Law

This contract shall be subject to English Law. The Buyer hereby submits to the non-exclusive jurisdiction of the English Courts for the determination of any question or dispute arising under this contract.

17. Notices

All notices required to be given by the Buyer to the Seller in respect of this contract shall not be effective unless in writing and sent to the Seller at its address stated overleaf or at such other address as the Seller may have previously notified the Buyer in writing as its address for service.

18. Headings

The headings to these Conditions are convenience of reference only and shall have no effect on the construction of the Conditions.