

## VERSALIFT - TERMS AND CONDITIONS OF SALE

### IMPORTANT DECLARATION

Subject as may herein after be provided pursuant to the provisions of section 55, nothing herein is intended to prejudice or affect, nor will it prejudice or affect, a purchasers statutory rights under section 12, 13, 14 and 15 of the Sale of Goods Act 1979 as amended.

### 1. INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings:
- | Word                 | Meaning   |
|----------------------|---|
| "the Buyer"          | The person(s), firm or company who purchases the Products from the Company;   |
| "the Company"        | Versalift Distributors (UK) Ltd;  |
| "Contract"           | Any contract between the Company and the Buyer for the sale and purchase of the Products, incorporating these Conditions;                             |
| "Delivery Point"     | The place of delivery of the Products under Condition 4;  |
| "Products"           | All products manufactured [or distributed] by the Company (including any part or parts of them, spare parts or refurbished products);                 |
| "Warranty Agreement" | Such warranty agreement as is entered into by the Buyer and the Company in conjunction with these Terms and Conditions in connection with a Contract. |
- 1.2 In these Terms and Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions headings will not affect the construction of these Conditions.

### 2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract will be grounded on these Terms and Conditions and such Warranty Agreement as may be entered into by the parties in connection with these Terms and Conditions, to the exclusion of all other terms and conditions and all other warranty agreements (including any terms or conditions and warranty agreement which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Products shall have no effect unless expressly effected in writing and signed by the Managing Director of the Company.
- 2.4 Each order of Products by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Products subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the order, in the whole or in part, is issued by the Company. Or (if earlier) the Company delivers the Products to the Buyer.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate and clearly state the order number or purchase order number, the date on which the order was made and a description of the Products.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 90 days only from its date, provided that the Company has not previously withdrawn it.

### 3. DESCRIPTION

- 3.1 The description of the Products shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of this Contract.

### 4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Products shall take place at the Company's place of business.
- 4.2 The Buyer will take delivery of the Products and pay for the Products within 14 working days of the date of the mailing of a notice from the Company that the products are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Company will endeavour to secure delivery of the Products on the estimated delivery date or dates, but does not guarantee the time of delivery nor shall the Company be liable for any damages or claims of any kind howsoever arising in respect of delay in the delivery. If no dates are so specified, delivery will be within a reasonable time.
- 4.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit and loss of business), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If the Company fails to deliver the Products within 180 days of the estimated date of delivery stated to the Buyer, the Buyer may give notice in writing to the Company to require delivery of the Products within 14 days of receipt of such notice. If the Products shall not be delivered to the Buyer within the said 14 days the Contract may at the election of the Buyer, be cancelled and in that event the deposit shall be returned to the Buyer and the Company will be under no other liability.
- 4.6 Should the Company be unable by reasons outside their control to secure delivery of the Products within 180 days of the estimated delivery date, the Company shall be at liberty to give notice in writing to the Buyer to cancel this Contract and shall return to the Buyer the deposit (if any) and shall thereupon be under no further liability on their part.
- 4.7 If for any reason the Buyer will not accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products in time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- Risk in the Products will pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - The Products will be deemed to have been delivered; and
  - The Company may store the Products until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance);] or
- Should the Buyer fail to accept delivery of and pay for the Products within 14 days of the date of mailing of a notice from the Company of the availability of the Products for delivery, the Company shall be at liberty to treat the Contract as repudiated by the Buyer and thereupon the deposit (if any) shall be forfeited without prejudice to the Company's rights to recover from the Buyer by way of damages any loss or expense which the Company may suffer or incur by reason of the Buyer's default.
- 4.8 The Buyer will provide at its expense at the delivery point adequate and appropriate equipment and manual labour for loading and unloading the Products if required."

### 5. NON-DELIVERY

- 5.1 The quantity of any consignment of Products as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless written notice is given to the Company within seven days of the date when the delivery of the Products would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Products.

### 6. CANCELLATION

- 6.1 Any order received by the Company from the Buyer concerning Products in respect of which the Buyer has requested and the Company has agreed to provide specifications over and above those contained in standard Products may not be cancelled by the buyer and the Buyer shall be liable for the entire cost of the Products ordered and any costs incurred by the Company in fulfilling the order which are non-recoverable by the Company in accordance with these Terms and Conditions.

- 6.2 Any order received by the Company from the Buyer, in respect of Products with a net value of over £1,000 may not be cancelled after the expiry of five working days of receipt of the order by the Company;
- (a) Any request for the cancellation or alteration of an order received by the Company after the expiry of this time limit shall be invalid and the Buyer shall be liable for the entire cost of the Products ordered and any costs incurred by the Company in fulfilling the order which are non-recoverable by the Company in accordance with these Terms and Conditions;
- (b) The Company may, at its discretion, in exceptional circumstances, upon receiving an application for cancellation of an order within the time limit as set out in this clause, alter the order, upon receiving a written request from the Buyer, in such manner as it may consider reasonable;
- (c) Any and all special orders are deemed confirmed upon the issue of the order acknowledgement.
- 6.3 Any cancellation of an order placed by the Buyer for the purchase of Products from the Company in respect of Products with a net value of under £1,000 must be made within 14 days of the delivery date of the Products;
- (d) Any request for the cancellation or alteration of an order received by the Company outside of this time limit shall be invalid and the Buyer shall be liable to incur the entire cost of the Products ordered, and any costs incurred by the Company in fulfilling the order, which are non-recoverable by the Company.

## 7. RISK/TITLE

- 7.1 The Products are at the risk of the Buyer from the time of delivery.
- 7.2 Title to the Products shall remain with the Company and shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the product.
- 7.3 Until ownership of the Products has passed to the Buyer, the Buyer must:
- (a) Hold the Products on a fiduciary basis as the Company's bailee;
- (b) Store the Products (at no cost to the Company) separately from all other Products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- (d) Maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- (e) Hold the proceeds of the insurance referred to in condition 7.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 The Buyer's right to possession of the Products shall terminate immediately if:
- (a) The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or examiner appointed over its undertaking or any part thereof, or a resolution is passed or a petition presented to any Court for the winding up of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe and, or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 214 of the Companies Act 1963 or the Buyer ceases to trade; or
- (c) The Buyer encumbers or in any way charges any of the Products.
- 7.5 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.
- 7.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 8. PRICE

- 8.1 Unless otherwise agreed by the Company in writing the price for the Products shall be the price set out in the Company's price list published on the date of order acknowledgement.
- 8.2 The price for the Products shall be exclusive of any Value Added Tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Products.

## 9. PRICE CHANGES

If after the date of this order the manufacturers or concessionaires recommended retail price for any of the Products shall be altered then:

- (a) In the event of the recommended retail price being increased the Company may give notice of the increase to the Buyer and the Buyer agrees to pay the Company the amount of the addition or additions to such retail price, unless within 14 days after receipt of such notice, the Buyer gives notice to the Company that he declines to do so in which case the Company shall have the option, by notice in writing to the Buyer, to cancel this Contract and any deposit paid by the Buyer shall be returned to him. Such notice of cancellation shall be sent by prepaid registered post addressed to the Buyer's last known address.
- (b) In the event of the recommended retail price being reduced before delivery of the goods to the client, then, upon the Company notifying the Buyer of such reduction, either party shall have the option by notice in writing to the other (as the case may be) to cancel the Contract and any deposit paid by the Buyer shall be returned to him."

## 10. PAYMENT

- 10.1 Payment of the price for the Products is due before despatch / collection unless otherwise agreed in writing with the Company, signed by the Commercial Manager. Any other special agreements must be agreed in writing and signed by the Managing Director for Versalift Distributors (UK) Ltd.
- 10.2 Time for payment shall be of the essence.
- 10.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.4 All payments payable to the Company under the Contract shall be paid by way of wire transfer only unless the Company gives the prior written consent to payment by other means to the Buyer. Details of the account to which payments must be made are set out on the order acknowledgement.
- 10.5 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 10.6 In the event that the Buyer has a query with regard to the amount requested for payment on the invoice, the order number or the order purchase number or any other details set out in the invoice, such query should be sent to the Company at least ten days before the due date as set out in Clause 10.1. Queries received by the Company less than 10 days before the due date shall not be addressed by the Company and the Buyer shall be obliged to make payment under the terms of Clause 10.1 unless the Company shall, at its sole discretion, decide otherwise.
- 10.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 10.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the quarterly rate of 2% above the base lending rate from time to time of Bank of England, accruing on a daily basis until payment is made, whether before or after any judgement.

## 11. LIMITATION OF LIABILITY

- 11.1 Subject to such Warranty Agreement as may be entered into by the parties together with acceptance of these Terms and Conditions, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) Any breach of these Conditions; and
- (b) Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1993, as inserted by Section 10, Sale of Goods and Supply of Services Act, 1980) are, to the fullest extent permitted by law, excluded from the Contract.

### THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.3

- 11.3 Subject to condition 10.2:
- (a) The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Products as set out in any invoice of the Company or such other amount as may be agreed by the parties in writing; and
- (b) The Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 12. ASSIGNMENT**  
12.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.  
12.2 The Company may assign the Contract or any part of it to any person, firm or company.
- 13. FORCE MAJEURE**  
The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 14. CONFIDENTIALITY**  
Related particulars shall be treated as confidential by the Buyer and not knowingly be divulged to any third party without the prior consent in writing of the Company.
- 15. REVISION**  
The Company reserves the right to revise these Terms and Conditions at any time.
- 16. GENERAL**  
16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.  
16.2 If any provision of the Contract is found by any Court, tribunal, arbitrator or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.  
16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.  
16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17. GOVERNING LAW**  
English law shall govern the formation, existence, construction, performance, validity and all aspects of the Contract. The parties shall submit to the non-exclusive jurisdiction of the English Courts.
- 18. ARBITRATION**  
All disputes arising in connection with these Terms and Conditions and any Warranty Agreement entered into together with acceptance of these Conditions shall be exclusively and finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by an Arbitrator appointed in accordance with the said Rules.  
The award shall be in writing and shall contain reasons for the decision. An award in any such arbitration shall be a condition precedent to any legal proceedings.  
The language of the arbitration proceeding shall be English.
- 19. COMMUNICATIONS**  
19.1 All communications between the parties in connection with this Contract shall be in the English language and must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:  
(a) (in the case of communications to the Company) to the office of the UK branch of the Company at - 1 Altendiez Way, Latimer Park, Burton Latimer, Northamptonshire NN15 5YZ, England or such changed address as shall be notified to the Buyer by the Company; or  
(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.  
19.2 Communications shall be deemed to have been received:  
(a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);  
(b) if delivered by hand, on the day of delivery;  
(c) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.  
19.3 Communications addressed to the Company shall be marked for the attention of the Commercial Manager and where such communications relate to an order, shall clearly state the order number or the purchase order number, the date on which the order was placed and a description of the Products.
- 20. INDUSTRIAL PROPERTY RIGHTS**  
20.1 All intellectual property rights subsiding in or relating to any calculations, data, specifications, designs, drawings, papers, documents, procedures, techniques, acceptance, maintenance and other tests, special and recommended parts and other equipment and any other material and information whatsoever given to the buyer by the Company in connection with the supply of goods by the Company to the Buyer or otherwise are vested in the company. The Buyer will not whether by itself, its officers, servants, agents or any of them or otherwise howsoever copy or reproduce any such items or material in whole or in part, nor will it disclose any such information, in whole or in part to any third Party. Further the Company shall be entitled to the ownership of all intellectual property rights subsiding in or relating to any calculations, data, specifications, designs, drawings, papers, documents or other items of material or information conceived, originated, developed or produced by the company for the Buyer pursuant to the contract for the supply of goods.  
20.2 The Buyer shall not at any time, for any reason whatsoever disclose or permit to be disclosed to any person or persons whatsoever, or otherwise make use of or permit to be made use of any trade secrets or other confidential information relating to the equipment technology, business affairs or finances of the company or any associated Company or organisation of the Company, or relating to the Company's agents, distributors, or other customers, or in respect of any of their dealings or transactions.  
20.3 The Buyer shall not seek to apply, or apply to register in its own name any of the Company's intellectual property rights and in particular those subsiding in ore relating to the Goods or a part thereof, nor shall it represent in any way that it has any right or title to the ownership of any such intellectual property right, nor shall it do any act or thing which might be contrary to the interest or rights of the Company in such rights and in particular challenge the ownership or validity of such rights.  
20.4 The Buyer at its own expense shall do all such acts and things and shall sign and execute all such deeds and documents as the Company in its sole discretion may require in connection with any steps or proceedings taken by the Company to restrain the infringement of it intellectual property rights.  
20.5 The Buyer undertakes and agrees that the use of any of its calculations, data, specifications, designs, drawings, papers, documents, procedures, techniques, acceptance, maintenance and other tests special and recommended parts and other equipment and other material and information by the Company when manufacturing and supplying the Goods will not infringe any intellectual property rights of a third party and shall indemnify the Company in respect of any such infringement.  
20.6 The buyer shall not alter or remove any trademark of the company which has been applied to the goods, nor apply any other trade mark to the Goods, nor make any alteration.  
The provision of this condition (20) shall survive the expiry or termination of any contract for whatever reason.