

WIND & SUN LIMITED
Terms and Conditions of Sales

January 2008

1 Definitions

In these conditions:

"Buyer" means a person to whom Wind & Sun Ltd is to supply goods and services pursuant to an order

"Contract" means any contract for the sale of goods and services by Wind & Sun Ltd to a Buyer

"Goods" means goods and/or materials which Wind & Sun Ltd supplies to a Buyer pursuant to a contract

"Wind & Sun Ltd" means Wind and Sun Limited (registered company number 3403803) whose registered office is at Humber Marsh, Stoke Prior, Leominster HR6 0NR

2 Application

2.1 These conditions shall govern and be incorporated in every Contract made by or on behalf of Wind & Sun Ltd with a Buyer and shall prevail over any terms and conditions contained or referred to in any documentation submitted by a Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing

2.2 A Buyer placing an order for goods and services shall constitute unqualified acceptance of these conditions

2.3 A variation of these conditions is only valid if it is in writing and signed by Wind & Sun Ltd and the Buyer and expressly states that it varies these conditions.

3 Quotations and Acceptance

3.1 A quotation by Wind & Sun Ltd does not constitute an offer and Wind & Sun Ltd may withdraw or revise a quotation at any time before accepting a Buyer's order.

3.2 Wind & Sun Ltd's acceptance of any oral or written order from the Buyer shall be effective only where such acceptance is in writing and signed by an authorised representative of Wind & Sun Ltd

4 Delivery

4.1 Any delivery or despatch date given by Wind & Sun Ltd is approximate only and Wind & Sun Ltd shall not be liable to the Buyer for any failure to deliver on any particular date or dates. Time for delivery is not of the essence and shall not be made so by the service of any notice.

4.2 Delivery shall be at Wind & Sun Ltd's premises unless otherwise agreed.

4.3 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract Wind & Sun Ltd may terminate the Contract with Immediate effect, may dispose of the Goods as it sees fit and may recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

4.4 Unless agreed otherwise by Wind & Sun Ltd the Goods may be delivered in instalments and each such instalment shall be treated as a separate Contract.

4.5 Section 32(2) of the Sale of Goods Act 1979 does not apply and Wind & Sun Ltd is not required to give the Buyer the notice specified in section 32(3) of the Act.

5 Price

5.1 The price payable for the Goods, services and delivery is as stated in the quotation given to the Buyer or as listed in Wind & Sun Ltd's published list of prices current at the time of despatch.

5.2 Wind & Sun Ltd may at any time prior to delivery of the Goods revise prices to take account of any increase in its own costs including without limitation the costs of any goods, material, carriage, labour or overheads; the increase or imposition of any tax, duty or other levy and variation in exchange rates. Where possible Wind & Sun Ltd will give one month notice of price changes to regular Buyers.

5.3 Unless otherwise specified, VAT and any other tax or duty payable by the Buyer shall be added to the price

6 Payment

6.1 For non-account Buyers payment is required in cleared funds before despatch. For account Buyers payment of invoices shall be made in full within 30 days of invoice unless otherwise agreed and confirmed in writing by Wind & Sun Ltd. Time shall be of the essence of payment. Wind & Sun Ltd may suspend the supply of Goods and or services to the Buyer where any amounts are overdue under any Contract until all such amounts have been paid.

6.2 Interest is payable at 3 per cent over the HSBC Bank plc base rate from time to time from the due date for payment until receipt by Wind & Sun Ltd of the full amount (including any accrued interest) whether before or after judgement.

6.3 Wind & Sun Ltd may require full or partial payment of the price prior to delivery or the provision of security by the Buyer in a form acceptable to Wind & Sun Ltd.

6.4 Wind & Sun Ltd has a general lien on all property of the Buyer in the possession of Wind & Sun Ltd (although the Buyer may have paid for it in full) in satisfaction of any amount owed by the Buyer to Wind & Sun Ltd under any Contract. Wind & Sun Ltd may do anything necessary to put such property into a saleable condition, sell it on such terms it may think fit and retain from the proceeds

7 Property and Risk

7.1 Risk in the Goods passes on delivery.

7.2 Any property of the Buyer in Wind & Sun Ltd's possession or under its control and all property supplied to Wind & Sun Ltd by or on behalf of the Buyer is held at the Buyer's risk.

7.3 Notwithstanding delivery and passing of risk, the Goods remain the property of Wind & Sun Ltd until the Buyer pays to Wind & Sun Ltd the agreed price for the Goods (together with any accrued interest) and no other sums whatever shall be due from the Buyer to Wind & Sun Ltd.

7.4 Until the property in the Goods passes to the Buyer the Buyer shall hold the Goods on a fiduciary basis and shall

(a) not part with possession of the Goods

(b) take proper care of the Goods and take all reasonable steps to prevent damage to or deterioration of them

(c) keep the Goods free from any charge, lien or other encumbrance and store the Goods in such a way as to show clearly that they belong to Wind & Sun Ltd

(d) notify Wind & Sun Ltd immediately upon the happening of any of the events set out in condition 14.2

(e) give Wind & Sun Ltd such information as Wind & Sun Ltd may require from time to time

7.5 From delivery until property in the Goods passes to the Buyer, the Buyer shall insure the Goods for their full value with a reputable insurer and, upon request, shall use reasonable endeavours to have Wind & Sun Ltd's interest in the Goods noted on the insurance policy. Until the property in the Goods passes to the Buyer, the Buyer shall hold the proceeds of any claim on the insurance policy on trust for Wind & Sun Ltd

7.6 Wind & Sun Ltd reserves the right to repossess and resell any of the Goods to which it has retained title. Wind & Sun Ltd's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods shall in any event cease upon the happening of any of the events set out in condition 14.2.

7.7 The Buyer grants an irrevocable right and licence to Wind & Sun Ltd to enter the Buyer's premises during normal business hours in order to inspect or repossess Goods to which it has retained title and the termination for any reason of a Contract shall not affect the continuance in force of this right and licence.

7.8 The Buyer acknowledges that as a consequence of its fiduciary relationship with Wind & Sun Ltd it is under a duty to Wind & Sun Ltd to hold the proceeds of sale of the Goods on trust for Wind & Sun Ltd and not to mingle such proceeds with other money or pay them into an overdrawn bank account and shall ensure that such proceeds are at all material times identified as Wind & Sun Ltd's money.

7.9 Wind & Sun Ltd shall be entitled to recover the price (plus VAT) in the event of non-payment by the Buyer notwithstanding that property in any of the Goods has not passed from Wind & Sun Ltd. Wind & Sun Ltd may, by notice to the Buyer at any time after delivery, pass property in the goods to the Buyer with effect from the date of the notice.

8 Infringement of Third Party Rights

8.1 The Buyer shall indemnify Wind & Sun Ltd against each loss, liability and cost which Wind & Sun Ltd incurs as a result of complying with any requirements or specifications of the Buyer which involves any infringement or alleged infringement of the rights of any third party.

8.2 If at any time it is alleged or, in Wind & Sun Ltd's reasonable opinion, is likely to be alleged that the Goods infringe the rights of any third party, Wind & Sun Ltd may at its option and at its own expense

- (a) modify or replace the Goods in such a way which does not detract from their overall performance so as to avoid the infringement, or
- (b) procure for the Buyer the right to continue to use the Goods or
- (c) re-purchase the Goods at the price paid by the Buyer

8.3 The Buyer shall notify Wind & Sun Ltd immediately of any actual or threatened claim or action alleging infringement of the rights of any third party. Wind & Sun Ltd shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all reasonable assistance to Wind & Sun Ltd as Wind & Sun Ltd may request. The cost of such proceedings shall be borne by Wind & Sun Ltd.

8.4 Where Wind & Sun Ltd designs the Goods pursuant to a commission by the Buyer, then any copyright, design right or other intellectual property in them shall vest in Wind & Sun Ltd and the Buyer agrees that it shall do any acts and execute any documentation required by Wind & Sun Ltd to secure vesting of such rights in Wind & Sun Ltd.

9 Liability

9.1 To the extent that any Contract contains any element of design Wind & Sun Ltd agree to use reasonable skill and care.

9.2 Wind & Sun Ltd is not liable to the Buyer

- (a) for non-delivery unless the Buyer notifies Wind & Sun Ltd within seven days from the date of Wind & Sun Ltd's invoice
- (b) for incorrect quantities unless the Buyer notifies Wind & Sun Ltd of a claim within 14 days of receipt of the Goods
- (c) for damages or loss of the Goods during carriage by Wind & Sun Ltd's own transport or by a carrier on behalf of Wind & Sun Ltd unless the Buyer notifies Wind & Sun Ltd of a claim within 14 days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier
- (d) for defects in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the Buyer
- (e) for other defects in the Goods
- (f) on supply only contracts, for any costs incurred or losses suffered as a result of incorrect installation of the Goods by the Buyer

9.3 If liability is accepted by Wind & Sun Ltd under condition 9.1 or 9.2 Wind & Sun Ltd's only obligation is at its option

- (a) to make good any shortage or non-delivery
- (b) to replace or repair any Goods found to be damaged or defective

(c) to refund to the Buyer the amount paid by the Buyer for the Goods which are the subject of a claim under condition 9.1

9.4 Wind & Sun Ltd is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without Wind & Sun Ltd's prior written approval. The Buyer shall indemnify Wind & Sun Ltd against each loss, liability, and cost arising out of such claims.

9.5 Wind & Sun Ltd's aggregate liability to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the purchase price of the Goods as determined by the net price invoiced to the Buyer in respect of any occurrence or series of occurrences.

9.6 Subject to this condition 9

(a) all terms and conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods are excluded

(b) Wind & Sun Ltd will pass on to the Buyer the benefit of any warranty given by the manufacturer of the Goods

(c) Wind & Sun Ltd is not liable to the Buyer for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise caused howsoever arising (and whether or not caused by the negligence of Wind & Sun Ltd, its employees or agents) other than liability for death or personal injury resulting from Wind & Sun Ltd's negligence

(d) Wind & Sun Ltd is not liable for any indirect or consequential loss or expenses suffered by the Buyer, howsoever caused, and including, without limitation, loss of anticipated profits, goodwill reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

9.7 Wind & Sun Ltd's prices are determined on the basis of the limits of liability set out in this condition. The Buyer may by written notice to Wind & Sun Ltd request Wind & Sun Ltd to agree a higher limit of liability provided insurance cover can be obtained for such higher limit. Wind & Sun Ltd shall effect insurance up to such limit and the Buyer shall pay on demand the amount of the premiums. The Buyer shall disclose such information as the insurers shall require and in no case shall the Buyer be entitled to recover from Wind & Sun Ltd more than the amount received from the insurers.

10 Specifications

10.1 Unless expressly agreed otherwise in writing by Wind & Sun Ltd, all drawings, designs, specifications and particulars submitted by Wind & Sun Ltd are approximate only and Wind & Sun Ltd is not liable for any deviation from them.

10.2 All drawings, designs, specifications and information submitted by Wind & Sun Ltd shall be treated as confidential and shall not be disclosed to any third party without Wind & Sun Ltd's written consent or used by the Buyer other than for the purposes authorised by Wind & Sun Ltd.

10.3 Wind & Sun Ltd accepts no responsibility for any errors omissions or other defects in any drawings, designs or specifications not prepared by Wind & Sun Ltd. The Buyer shall indemnify Wind & Sun Ltd against each such loss, liability and cost which Wind & Sun Ltd incurs arising from them.

11 Packaging

11.1 The Buyer shall meet the cost of any special packaging which it may request or which may be necessitated other than by Wind & Sun Ltd's normal means of delivery. The Buyer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations, whether statutory or otherwise, relating to protection of the environment.

11.2 Wind & Sun Ltd is entitled to invoice the Buyer for the cost of all pallets and other returnable packaging materials unless they are returned to Wind & Sun Ltd in good condition, carriage paid within 30 days of the date of delivery.

12 Licences and Consents

If a licence or consent of any governmental or other authority is required in connection with the Buyer's purchase or use of the Goods, the Buyer shall obtain the licence or consent at its own expense and produce

evidence of it to Wind & Sun Ltd on demand. Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by Wind & Sun Ltd resulting from such failure shall be paid by the Buyer

13 Force Majeure

Neither party shall be liable to the other in any way for any loss or damage arising directly or indirectly through or in consequence of performance being prevented or delayed by happenings or occurrences due to or by reason of any matters or things beyond the control of the respective parties.

14 Termination

14.1 On or at any time after the occurrence of any of the events in condition 14.2, Wind & Sun Ltd may stop any Goods in transit, suspend further deliveries to the Buyer, exercise its rights under condition 7 (Property and Risk) and/or terminate any Contract with the Buyer with immediate effect by written notice to the Buyer.

14.2 The events are:

- (a) the Buyer being in material breach of an obligation under a Contract
- (b) the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution
- (c) the making of an administration order in relation to the Buyer or the appointment of a receiver order, or an encumbrance taking possession of or selling, any of the Buyer's assets
- (d) the Buyer making an arrangement or composition with its creditors generally or applying to a court of competent jurisdiction for the protection of its creditors.

Upon termination, any indebtedness of the Buyer to Wind & Sun Ltd becomes immediately due and payable and Wind & Sun Ltd shall be under no further obligation to supply Goods or services to the Buyer

15 Assignment

The Buyer may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Wind & Sun Ltd's prior written consent.

16 Governing Law

These conditions and any Contract made under them shall be governed by and construed in accordance with English law and the courts of England shall have non-exclusive jurisdiction.

17 Exclusion of Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions nor any Contract made under them and no person other than the Buyer and Wind & Sun Ltd shall have any rights thereunder, nor shall these conditions or any Contract be enforceable under that act by any other person.