

TERMS AND CONDITIONS OF SALE

1. Definitions

In these terms and conditions of sale :-

- 1.1 the "Company" shall mean Max Kold Ltd, a company registered in England under number 6104900 and whose registered office is at 169 New road, South Chingford, London E4 9EZ.
- 1.2 "Authorised officer" shall mean a director of the Company.
- 1.3 the "Buyer" shall mean the company firm or person who places an order with the Company or otherwise agrees to buy from the Company any of the 'Goods'.
- 1.4 the "Goods" shall mean all or any of the products which from time to time the "Company" offers for sale and which from time to time form the subject matter of the "Contract".
- 1.5 the "Contract" shall mean the contract on these terms and conditions for the sale by the Company to the Buyer of the Goods.
- 1.6 the "Unit" shall mean the aggregate of chassis assembly and spare parts which when assembled will form a unit of Goods.
- 1.7 the "Manufacturer" shall mean the original supplier of the Goods to the Company.
- 1.8 "specials" Goods supplied by the Company to the Buyer at the Buyer's request that are not ordinarily held in stock by the Company in its ordinary course of business.

2. The Company's Terms and Conditions.

- 2.1 No variation or addition to these terms and conditions of sale shall be binding upon the Company unless expressly accepted by the Company in writing by an Authorised Officer.

3. Acceptance.

- 3.1 Unless previously withdrawn, quotations and tenders are open for acceptance for the period stated therein or if no period is stated, within thirty (30) days from the date thereof.
- 3.2 All orders must be in writing and must be accompanied by sufficient information to enable the Company to proceed, without delay, with the execution of the order.
- 3.3 Orders shall not be binding on the Company unless accepted by the Company in writing and made subject to these Terms and Conditions of Sale.
- 3.4 Orders accepted by the Company may not be cancelled under any circumstances unless agreed in writing by the Company. Cancellation of Goods ordered to the Buyer's own specification/specials will not be accepted.
- 3.5 All goods are offered subject to availability.

4. Price.

- 4.1 All prices are exclusive of VAT and are subject to variation at any time to reflect corresponding variations in the Company's own cost of materials, fuel and labour. The Company reserves the right to alter prices without prior notice.

- 4.2 The Buyer shall be liable for any increase in price or expenses incurred by the Company arising out of any delay caused by the Buyer.
- 4.3 Due to the cost of handling small orders, the Company reserves the right to charge its minimum billing charge ruling on the date of order (if applicable).
- 4.4 If the Buyer has a credit account with the Company the Company may withdraw it or reduce the Buyer's credit limit or change the payment terms under the credit arrangement at any time.

5. Terms of Payment.

- 5.1 Payment for all Goods delivered shall be made in full without any deduction within thirty (30) days of the date on which the invoice was issued unless otherwise stated.
- 5.2 Time for payment is of the essence of the Contract. If the Buyer fails to pay on the due date the Company shall be entitled :
- (i)- To charge interest on any amounts overdue at the rate of 4% above the Base Rate of Natwest Bank Ltd from the date of issue of the invoice until payment and/or
 - (ii)- To suspend further deliveries until the payment has been made and/or
 - (iii)- Insist on receiving immediate payment (Cash/Credit Card) for any new orders and/or
 - (iv)- To cancel the Contract
- 5.3 The Company shall have a general lien on all goods for all sums due at any time from the Buyer. The Company shall be entitled to sell the goods at the expense of the Buyer and to use the net proceeds thereof in or towards payment of such sums.
- 5.4 All bounced cheque will incur a fifty pounds (£50.00) charge.

6. Reservation of Title.

- 6.1 Title to the Goods shall not pass to the Buyer until the Company has received payment in full for the price of the Goods and all other goods sold by the Company to the Buyer for which payment has not been made.
- 6.2 Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties. The Buyer shall properly store, protect, insure and identify the Goods as the Company's property. Until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.
- 6.3 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company. If the Buyer fails to do so, the Company is entitled forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 6.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the Company's property but if the Buyer does so all monies owing by the Buyer to the Company shall forthwith become due and payable (without prejudice to any other right or remedy the Company may have).

7. Risk.

- a. In the case of Goods collected or delivered by third party carriers, responsibility for the Goods shall be immediately transferred to the Buyer at the moment the Goods leave the Company's premises for delivery to the Buyer pursuant to the Contract.
- b. In the case of Goods delivered by the Company's vehicles, responsibility for the Goods shall pass to the Buyer at the moment when said Goods are delivered to the place of delivery as specified by the Buyer.
- c. In the case of Goods not normally offered for sale by the Company and ordered expressly on behalf of the Buyer, responsibility for said Goods shall pass to the Buyer at the moment that the Company notifies the Buyer that the Goods are ready for delivery or collection.

8. Delivery.

- 8.1 The place and date of delivery are as agreed between the Company and the Buyer.
- 8.2 In the case of damage to Goods in transit, notice of damage or breakage shall be sent in writing by the Buyer to both the Company and the carrier (if any) within three (3) days of receipt and a written claim within seven (7) days.
- 8.3 In the case of loss of Goods in transit or delay in delivery, notice in writing shall be sent by the Buyer to the Company and the carrier (if any) within seven (7) days of the date of the invoice for said Goods and a written claim within fourteen (14) days.
- 8.4 Any time or date specified for despatch or delivery of the Goods given by the Company is an estimate only and shall not form part of the Contract unless expressly made a term of the Contract in writing.
- 8.5 Carriage will be charged extra unless otherwise agreed to in writing. Where the quoted price includes freight, the Company shall determine the delivery route. Special routing at the Buyer's request will be subject to a separate charge.
- 8.6 The Company shall have the right to despatch any portion of the Goods covered by the Contract and to invoice the Buyer for such portion so despatched on these Terms and Conditions of Sale unless otherwise agreed to in writing.
- 8.7 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Company shall be entitled to arrange storage at its own premises or elsewhere at the Buyer's risk and expense.

9. Specification.

- 9.1 The Goods are supplied in accordance with the specification (if any) submitted by the Buyer and any additions and alternations shall be the subject to an extra charge.
- 9.2 Any part of the Goods not so specified shall be in accordance with the Company's printed catalogue of the Company's suppliers (subject to any modifications made since publication).
- 9.3 The Company shall not be under any liability in respect to description or specification of other matters in relation to the Goods contained in any material such as price lists, catalogues, trade publications and advertising matter other than in the Contract itself.
- 9.4 If the Company adopts any changes in construction or design of the Goods or the specification thereof, the Buyer shall accept the Goods so changed in fulfilment of the order unless the Buyer states otherwise in the Buyer's written order.
- 9.5 Where the Buyer supplies any drawings or specifications, the Buyer warrants that they are accurate.
- 9.6 All published specification for Maxkold products are liable for change without prior notice.

10. Suitability for Purpose.

It is entirely the Buyer's responsibility to ensure that the kind and/or class of the Goods ordered by it are suitable for its purpose. The Company shall not be under any liability for any loss or damage however arising from or attributable to any advice statements or representations given by the Company, its employees or agents to the Buyer in respect of the Goods whether regarding performance capability or suitability for any purpose. Such liability is hereby expressly excluded to the extent permitted by law.

11. Force Majeure etc.

Notwithstanding any other provision of the Contract the Company shall not be liable in any way for loss or damage resulting from the failure to supply any of the Goods, for any delay or defect in the supply of any of the Goods caused by strikes, lock-outs, industrial action, accident, fire, flood, scarcity of materials or labour, acts of God, war, national emergency, terrorism, riot, civil commotion or any other cause not within the Company's direct control.

12. Indemnity.

12.1 The Buyer will indemnify the Company against any loss or damage by the Company as a result of any failure by the Buyer to perform any of the covenants and conditions of the Contract including the payment of reasonable storage charges while any of the Goods remain on the Company's premises after risk has passed to the Buyer.

12.2 The Buyer will indemnify the Company against all claims against the Company by a third party arising directly out of the Contract including where Goods are made to the Buyer's specification any claim for the infringement of patent, registered design, trade mark or other rights affecting the Goods.

13. Compliance with Instructions and Safety.

The Buyer must ensure that all Goods are installed, maintained and used strictly in accordance with the appropriate instructions and recommendations both for the safety of users and third parties and also to prevent damage to the Goods.

14. Warranty Conditions.

In the case of Goods sold by the Company where the Manufacturer's and/or other recommended installation and maintenance procedures have been correctly followed, the Company warrants that:

- i. Parts supplied under this Warranty are only warranted for the remainder of the period of Warranty on the Goods originally sold under the Contract.
- ii. The Company does not accept claims for postage carriage or delivery of an item under Warranty. Such costs will be at the expense of the Buyer.
- iii. The Company reserves the right to make site visits in order to inspect installations in the case of any warranty claim.
- iv. All Goods returned under warranty must have gas or liquid connections sealed to prevent ingress of any foreign body or moisture.
- v. The Company is not responsible for any labour charges for the replacement of warranty items.
- vi. No warranty shall apply in respect of Goods which have not been paid for in full.

15. Warranty Procedure.

- a. (i) When a part is found to be defective within its period of warranty, a replacement should be ordered from the Company, with a clear statement that the order is for a **Warranty Replacement** giving the name of the individual whom we can contact for information.
- b. The replacement parts will be despatched with an invoice and a claim form will be forwarded.

- c. The completed claim form must be returned by the Buyer together with the defective parts, within 30 days of despatch of the claim form by the Company.
- d. Invoices for replacement parts are payable according to the Company's normal terms, regardless of the state of progress of the claim.
- e. When the claim has been duly processed and liability has been accepted under the Warranty in Clause 14 of these Terms and Conditions of Sale by the Company a credit note will be issued to cover the replacement parts.

16. Buyer's Insolvency.

If prior to delivery or despatch of the Goods the Buyer shall be adjudicated bankrupt or have a Receiving Order made against him or being a Company shall pass a resolution for winding-up or suffer a wind-up order to be made against it or have a Receiver appointed of the whole or any part of its assets or enter any form of arrangement with its creditors or suffers any other form of insolvency the Company may elect not to deliver the Goods except against payment in cash of the purchase price of the Goods in full.

17. Returned Goods.

New Goods cannot be returned except when previously agreed in advance, and subject to their return in perfect and resaleable condition, a rehandling charge of 15% of the price of the Goods will be made to cover administration expenses.

18. Patents etc.

The Company gives no indemnity to the Buyer in respect of any claim by a third party of actual or alleged infringement of any patent registered design trade mark or rights affecting the Goods.

19. Exclusion of Statutory Terms and Consequential Loss.

Save as provided herein and subject to the Sale of Goods Act 1979, the Unfair Contract Terms Act 1977 and the Supply of Goods and Services Act 1982, the Company shall be under no liability howsoever arising and whether in Contract or tort or otherwise in respect of any defects in Goods sold or defective work or services or for any loss damage or injury resulting there from including consequential loss. The exclusion of liability in these Conditions extends to the negligence of the Company, its servants and agents and any loss or damage resulting therefrom so far as permitted by law.

20. Frustration.

If the Company is prevented from performing the Contract by any cause beyond its reasonable control whatsoever and wheresoever arising then it may by written notice to the Buyer determine the Contract. In such event the Buyer shall pay to the Company all reasonable costs incurred by the Company at the date of such notice in and about its partial and/or attempted performance of its obligations hereunder but subject thereto neither the Company nor the Buyer shall be under any liability whatsoever to the other in connection with this Contract.

21. Severability.

The invalidity or unenforceability for any reason of any clause or sub-clause of this Contract shall not prejudice or affect the validity or enforceability of the remainder.

22. Severance of any Waiver by the Company.

No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

23. Governing Law.

The Governing law of the Contract shall be English law and the parties submit to the jurisdiction of the English Courts.