

W&H Impex Inc

TERMS AND CONDITIONS OF SALE AND REPAIR

1 Definitions

- 1.1 "Company" means W&H Impex of 6490 Hawthorne Drive, Windsor, Ontario Canada, N8T 1J9. (GST No. 133001354).
- 1.2 "Conditions" means these Terms and Conditions of Sale and Repair.
- 1.3 "Contract" means the contract for the sale of the Goods and/or the supply of the Services by the Company governed by these Conditions.
- 1.4 "Customer" means the person, firm or company from whom an Order is accepted by the Company.
- 1.5 "Goods" means the articles or any of them described in the Order and supplied under the terms of the Contract.
- 1.6 "Order" means the order placed by the Customer for the supply of the Goods.
- 1.7 "Services" means repair services described in the Order and supplied under the terms of the Contract.

2 The Agreement

- 2.1 The Contract and all agreements from time to time entered into between the Company and the Customer which provide for the sale of any goods or the supply of any repair services by the Company to the Customer shall be deemed to incorporate these Conditions which represent the entire agreement of the Company and the Customer with regard to the Goods and/or the Services except as may be otherwise specifically agreed in writing by the Company. These Conditions shall override any terms and conditions stipulated, incorporated or referred to by the Customer in any order, correspondence, negotiations or in any other way.
- 2.2 No Order is binding on the Company until expressly accepted by the Company.
- 2.3 Without prejudice to the foregoing, acceptance of delivery of the Goods by the Customer or the submission by the Customer of goods for repair by the Company shall be deemed to constitute acceptance of these Conditions to the exclusion of all other terms and conditions whatsoever.
- 2.4 If any term or condition herein (or part thereof) is held to be invalid or unenforceable for any reason by any court of competent authority, it is to that extent to be deemed removed from the Contract without prejudice to the validity or effectiveness of the remaining terms and conditions hereof.
- 2.5 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.
- 2.6 If the Customer (being a company) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction or becomes insolvent or compounds with its creditors or has an administrator or administrative receiver appointed over all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with its creditors or (in any case) commits a material or serious breach of the Contract (and in the case of such a breach being remediable fails to remedy it within 7 days of receiving notice to do so), he will be deemed to have repudiated the Contract.

3 Cancellation

- 3.1 No cancellation of any Order by the Customer is permitted except where expressly agreed by the Company in writing.
- 3.2 If the Company agrees to a cancellation of an Order and the Goods have already been shipped from the Company's warehouse or the Company has commenced performance of the Services the Customer shall pay 20 per cent of the value of the Order plus Goods and Services Tax (GST) under the Excise Tax Act to the Company, to cover administration costs.

4 Prices

- 4.1 All Goods and Services are supplied subject to the Company's prices ruling at the time of acceptance of the Order.
- 4.2 All prices quoted are ex works and exclusive of GST and all costs or charges in relation to loading, unloading, carriage, insurance and packing, all of which amounts the Customer shall pay in addition.
- 4.3 The Customer shall not be entitled to make any deduction from the price of the Goods or the Services in respect of any alleged rights to set off or counterclaim unless both the validity and the amount thereof have been expressly acknowledged and admitted by the Company in writing.

5 Payment Terms

- 5.1 Payment for the Goods and/or Services shall be due as indicated on the invoice for the Goods or Services in question.
- 5.2 The Company reserves the right to require full payment with the Order prior to delivery of the Goods or completion of the Services for new customers or customers in respect of which the provisions of Clause 5.4 apply.
- 5.3 Time for payment of the price shall be of the essence and, without prejudice to any other right which the Company may have, the Company shall be entitled to charge interest on overdue amounts due under the Contract from the due date for payment until payment, such interest to accrue from day to both before and after judgment and to be payable on demand at the rate of 5% per month.
- 5.4 The Company reserves the rights to suspend further delivery or works, to demand security for payment and to cancel any allowance for further credit in the event of:
 - (a) any payment under the Contract (or any other contract with the Customer) not being made when due; or
 - (b) the Company in its sole discretion at any time considering that the financial condition of the Customer has ceased to justify any such terms being permitted.
- 5.5 Queries on invoices must be made in writing within 14 days after the date of the invoice.

6 Delivery and risk

- 6.1 Delivery of the Goods shall take place at the Company's premises unless otherwise agreed in writing. Any carriage arranged by the Company shall be as agent for, and at the cost and risk of, the Customer.
- 6.2 Time for delivery of the Goods shall not be of the essence of the Contract and shall not be made so by notice. The Company shall use reasonable endeavours to deliver the Goods within a reasonable time but reserves the right to deliver the Goods in instalments where any of the respective Goods are not immediately available.
- 6.3 Risk in the Goods shall pass to the Customer on delivery. If the Customer requires postponement of delivery beyond the projected delivery date or if the Customer fails to give instructions regarding delivery, the Company may at its option, exercisable by notice in writing to the Customer, treat the risk in the Goods as having passed to the Customer and store the Goods at the Customer's expense and risk.
- 6.4 When delivery is to be made by instalments or the Company exercises its right to deliver by instalments under Clause 6.2 the Company shall be entitled to invoice the Customer for each such instalment and each such instalment shall be deemed to be a separate Contract.

7 Repairs

- 7.1 Any goods submitted to the Company for repair shall be sent, and are returned by the Company, at the risk and cost of the Customer.
- 7.2 Time for performance of the Services shall not be of the essence of the Contract and shall not be made so by notice. The Company shall use reasonable endeavours to perform the Services within a reasonable time but reserves the right to cancel the Contract or to delay performance of the Services if it determines that the goods submitted for repair are not reasonably capable of repair or if any parts or materials necessary to perform the Services are not immediately available.
- 7.3 Defective parts replaced by the Company and removed from the goods in respect of which the Services are performed shall become the property of the Company.

- 7.4 Repair estimates declined by the Customer shall be subject to an evaluation fee, to cover administration costs.
- 7.5 The company shall not be responsible for unclaimed items after 60 days.
- 8 Passing of Property and Retention of Title
- 8.1 Notwithstanding delivery the property in the Goods shall not pass to the Customer until the Customer had paid in full the price of the Goods.
- 8.2 Furthermore the property in the Goods shall not pass to the Customer unless and until the Company has received in cleared funds all sums which are or which may become due to the Company from the Customer on any account.
- 8.3 Until the property in the Goods has passed to the Customer, the Customer must:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) maintain the Goods in satisfactory condition insured on the Company's behalf and to the reasonable satisfaction of the Company for their full price against all risks; and
 - (d) hold all proceeds of the insurance referred to in Clause 8.3(c) above on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 8.4 The Company may, at any time if payment is overdue in whole or in part, or in the event of the Customer's repudiation of the Contract pursuant to Clause 2.6, without prejudice to any other right, enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same.
- 9 Warranty and Inspection
- 9.1 The Company warrants that (subject to the other provisions of the Contract), the Goods and/or the Services will on delivery, and for the relevant period specified in Clause 9.2, be free from defects in materials or workmanship.
- 9.2 The relevant periods for the purposes of Clause 9.1 shall be the periods from time to time specified by the Company at the time of acceptance of the Order or, in the case of Services, the period of 6 months from the invoice date.
- 9.3 The Company shall not be liable for any breach of the warranty in Clause 9.1:
- (a) if the Goods delivered, or the goods in respect of which the Services have been performed, are not used and maintained in accordance with the manufacturer's instructions or (if there are none) in accordance with good practice, or have been repaired by unqualified personnel, dropped, abused or altered; and
 - (b) unless the Customer gives the Company written notice of the defect together with details of the relevant invoice.
- 9.4 The Customer is under a duty to inspect or to procure an inspection is made of the Goods, and/or the goods in respect of which the Services have been performed, on delivery or on collection as the case may be.
- 9.5 The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this Clause are not complied with, and in any event will be under no liability if a written complaint is not delivered to the Company within 7 days of delivery detailing the alleged defect or shortage.
- 9.6 In all cases where defects or shortages are complained of, the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods and/or the goods in respect of which the Services have been performed is given to the Company before any use is made thereof or any alteration or modification is made thereto by the Customer. Under no circumstances must the goods which are the subject of a complaint be returned to the Company without the Company's consent.
- 9.7 If the Goods or Services are found to be defective the Company shall at its discretion repair or replace the Goods or re-perform the Services. Special Order products not listed in the Company's catalogue will not be accepted back by the Company for credit.

9.8 Subject to Clause 10.2, the Company shall have no liability in respect of any breach of the warranty in Clause 9.1 except as expressly provided in this Clause 9.

10 Liability

10.1 Save as expressly stated herein, all warranties and conditions whether express or implied by statute, usage, trade, custom or otherwise relating to the quality or nature of the Goods or Services or their life or wear or fitness for any particular purpose or use under any specific conditions are hereby expressly excluded.

10.2 The Company shall not be liable for any consequential or indirect loss suffered by the Customer whether this loss arises from breach of duty in contract, tort or misrepresentation or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss include loss of profits, loss of contracts, damage to the property of the Customer or anyone else and personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence).

10.3 The Company's total liability for all claims in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising out of any one Contract shall not exceed the Contract price.

11 Force Majeure

The Company shall have no liability under the Contract in respect of any failure or delay in fulfilling any of the Company's obligations to the extent that fulfilment thereof is prevented, frustrated, impeded or delayed as a consequence of any event or occurrence whatsoever beyond the reasonable control of the Company.

12 Sales Promotion Documentation

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Customer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

13 GENERAL

13.1 Notwithstanding any other provisions of these Conditions or the Contract, nothing in these Conditions or the Contract confers or purports to confer any rights to enforce any of its terms by any person who is not a party to this Contract.

13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company

14 Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the laws of the province of Ontario and the Dominion of Canada, as applicable therein and all disputes arising in connection with the Contract shall be submitted to the exclusive jurisdiction of the Ontario courts