

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Conditions:

- 1.1 “the Company” means Scarab Sweepers Limited.
- 1.2 “the Customer” means the person(s), firm or company who purchases the Goods and/or Services from the Company.
- 1.3 “the Contract” means any contract between the Company and the Customer for the sale and purchase of the Goods and/or Services, incorporating these Conditions.
- 1.4 “the Goods” means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).
- 1.5 “Services” means any services agreed in the Contract to be supplied to the Customer by the Company.
- 1.6 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.
- 1.7 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.
- 1.8 The international rules for the interpretation of trade terms of the International Chamber of Commerce (Incoterms) as in force at the date when the Contract is made shall apply save to the extent they conflict with these Conditions, in which case these Conditions shall prevail.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions enclosed upon delivered or contained in the Customer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such a 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 Goods and/or Services shall have no effect unless expressly agreed in writing and signed by the authorised representative of the Company.
- 2.4 Each order for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgment of order is issued by the Company or (if earlier) the Company delivers the Goods and/or Services to the Customer.
- 2.6 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate and that any necessary information relating to the Goods and/or Services is supplied to the Company within sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgment of order to the Customer. Unless otherwise specified, any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

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 Goods and/or Services described in them. They will not form part of this Contract.

4. SPECIFICATIONS/TESTING

- 4.1 If the Goods are to be manufactured or any process is to be applied to the Goods in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss damages costs and expenses ordered against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person which results from the Company's use of the Customer's specifications.
- 4.2 The Company reserves the right (at the expense of the Customer) to make any changes in the specification which are required to conform with any applicable safety or other statutory requirement or which do not materially affect the quality or performance of the Goods.

5. CANCELLATION

- 5.1 If the Customer cancels any Order prior to the date on which the Company is committed to manufacture the Goods (as determined by the Company) (the Commitment Date) the Customer shall pay to the Company on demand a cancellation fee equal to 15% of the value of the Goods.
- 5.2 For the avoidance of doubt no Order may be cancelled by the Customer on or after the Commitment Date.

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Company (or its agent) delivering the Goods to the Customer's site or place of storage specified in the Customer's order form or the Company making the Goods available for collection at the Company's works (as the case may be).
- 6.2 Any dates specified by the Company for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time. The Goods may be delivered in advance of the quoted delivery date upon reasonable notice to the Customer. Because time for delivery shall not be of the essence, the Company shall not be liable for any breach of contract or legal or commercial disadvantage, the Customer shall suffer in the event that the Goods are not delivered on the stated delivery date.
- 6.3 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.4 If for any reason the Customer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then without prejudice to any other right available to the Company the Company may at its discretion store the Goods until delivery takes place and charge the Customer for all related costs and expenses including a handling charge and insurance or terminate the Contract and sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 6.5 Where any Goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by the Company to deliver one or more of the instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

- 6.6 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. RISK/TITLE

- 7.1 The Goods are at the risk of the Customer from the time of delivery, or when the Company notifies the Customer that the Goods are available for collection.
- 7.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and shall store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party and properly store protected, insured, in satisfactory condition and identified as the Company's property.
- 7.4 Until ownership of the Goods has passed to the Customer, the Customer shall be entitled to resell or use the Goods in the ordinary course of business but shall account to the Company for the proceeds of sale of the Goods including insurance proceeds and shall keep such proceeds separate from the moneys of the Customer and third parties.
- 7.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 7.5.1 the Customer has a bankruptcy, administration or winding up order made against him or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or otherwise enters into liquidation (whether voluntary or compulsory); or
- 7.5.2 the Customer fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 7.5.3 the Customer encumbers or in any way charges any of the Goods.
- 7.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them (without being liable for any damage caused by so doing) and so terminate (without liability to the Customer) the Customer's right to possess, use or otherwise deal with the Goods.

8. SUPPLY OF SERVICES

- 8.1 The Company shall provide the Services to the Customer in accordance with the specifications set out in the Contract in all material respects.
- 8.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 8.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

- 8.5 The Customer shall:
- 8.5.1 co-operate with the Company in all matters relating to the Services;
 - 8.5.2 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
 - 8.5.3 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.5.4 prepare the Customer's premises for the supply of the Services;
 - 8.5.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - 8.5.6 keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 8.6 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.6.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 8.6.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition **Error! Reference source not found.**; and
 - 8.6.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

9. PRICE

- 9.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 9.2 Unless otherwise agreed by the Company in writing the charges for Services shall be on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Company's standard daily fee rates, as notified on the Company's website from time to time or otherwise communicated to the Customer;
 - 9.2.2 the Company's standard daily fee rates for each individual person are calculated on the basis of normal business days;
 - 9.2.3 the Company shall be entitled to charge a premium rate for any time worked by individuals whom it engages on the Services on non-business days (including weekends and bank holidays); and

- 9.2.4 the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.
- 9.2.5 The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, any change in delivery dates, quantities or specification for the Goods and/or Services which is requested by the Customer or any failure of the Customer to give the adequate information or instructions. To the extent that the Company imposes a price increase under this clause 9.2.5 the Customer shall pay the new price in full on the same terms as previously agreed.

9.3 The price for the Goods and/or Services shall be exclusive of any value added tax and any other taxes, duties or other charges and impositions imposed by any national local or other authority which shall be charged if applicable at the appropriate rate and all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Customer will pay in addition when it is due to pay for the Goods and/or Services.

10. DEPOSIT AND PAYMENT

- 10.1 The Company reserves the right to request a deposit upon acceptance of an order from the Customer. The deposit is a deposit against default by the Customer of payment of the charges or other breach of these conditions such as non-payment of the cancellation fee. If the Customer fails without due cause to remedy a breach of these Terms, the Company shall be entitled to apply the deposit against such default, loss or damage incurred by the Company.
- 10.2 Payment of the price for the Goods and/or Services is due when the Goods are despatched to or collected by the Customer or the Services are supplied (as appropriate), unless otherwise agreed in writing by the Company, and 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 become due immediately upon termination of this Contract despite any other provision.
- 10.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 10.6 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of The Bank of England, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Company will also be entitled to cancel the Contract and any other contracts it has with the Customer and suspend any supply of Goods and/or Services.

11. WARRANTY

- 11.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 24 months from the date of actual delivery, or 2,000 running hours from the date of actual delivery whichever is sooner, the Goods correspond with their specification at the time of delivery and will be free from defects in materials and workmanship.
- 11.2 The Company does not warrant the condition or quality of any used Goods supplied to the Customer, or other truck manufacturers' chassis cab content or any third party engine including but not limited to the M25H, M6, Mistral and M65T or the engine fitted in the Scarab Minor Sweeper or any other component not manufactured by the Company and any such warranty claims must be submitted to the manufacturer of that component, or their locally appointed agent.

- 11.3 The Company shall not be liable for a breach of any of the warranties in condition 11.1 unless the Customer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect.
- 11.4 The Company shall not be liable for a breach of any of the warranties in condition 11.1 if the Customer makes any further use of such Goods after giving such notice, the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice, or the Customer alters or repairs such Goods without the written consent of the Company, or uses non genuine parts to effect a repair.
- 11.5 The following consumable items listed are excluded from the Company warranty: all fuel oils, antifreeze, all brush link pivots and brushes, wander hoses, suction nozzles, body inlet ducts, wearing plates, high pressure water pump piston seals and valves, door seals, inlet seals, batteries, tyres, all brushes, lift cables, rubber skirts, suction nozzle wheels, flap trunking, deflectors, screens, flaps or blanking plates, water pump diaphragm valves and water jets, all filter strainers and elements, windows, glass mirrors, light bulbs, fuses, brake lining pads, auxiliary drive belts and any other part normally regarded as consumable.
- 11.6 Any parts replaced under the terms of this warranty will be covered by the unexpired portion of this warranty.
- 11.7 Subject to conditions 11.3 and 11.4, if any of the Goods do not conform with any of the warranties in condition 11.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Customer's expense, remove the defective Goods or part of such Goods and return the Goods or the part of such Goods which is defective to the Company. Parts replaced under warranty will be delivered by the Company FOB port of exportation.
- 11.8 If the Company complies with the terms contained in the foregoing provisions of this clause 11 it shall have no further liability for a breach of any of the warranties in condition 11.1 in respect of such Goods.
- 11.9 No representative or agent of Scarab Sweepers Limited has the authority to add to or to vary these Warranty Conditions except with the Company's official confirmation in writing from an authorised representative of Scarab Sweepers Limited, head office in Marden Kent England.

12. **LIMITATION OF LIABILITY**

- 12.1 Subject to condition 11, 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 Customer in respect of any breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 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 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE CONDITION 12.4

- 12.4 Subject to conditions 12.2 and 12.3:
- 12.4.1 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 paid for the Goods; and
- 12.4.2 the Company shall not be liable to the Customer 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.

13. ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Customer shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of the Company.
- 13.2 The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods or the nature of the Services ordered by the Customer (without liability to the Customer) 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, pandemic and 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.

15. COMMUNICATIONS

Any notice required to be given by either party under these Conditions shall be in writing addressed to the other party at its registered office or address as specified in the Contract or such other addresses as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been served 48 hours after posting.

16. DATA PROTECTION & CONFIDENTIAL INFORMATION

The Company will not use any confidential information which enters its knowledge, possession, or control by virtue of providing the Goods and/or Services, for any purposes other than those required to provide the Goods and/or Services. The Company will not disclose any confidential information to any third party except insofar as this may be required for the proper provision of the Goods and/or Services and then only under appropriate confidentiality provisions approved by the Customer. The Company may store or reproduce electronically information relating to the Customer, confidential or otherwise but will do so in accordance with the Customer's reasonable instructions, wherever practically possible. The Company will continue to be bound by these confidentiality obligations after it has ceased to provide the Goods and/or Services and for the duration thereafter that any particular piece of information can be reasonably deemed to remain confidential. These obligations of confidentiality will cease to apply to any particular item of confidential information once it becomes public knowledge other than by the Company's act or default.

17. EXPORT TERMS

- 17.1 The Customer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the Country of destination, paying import duties and obtaining the grant of export and import licences as required. The Company reserves the right not to commence work on the Goods until the licences, clearances and other consents have been complied with. In the event of failure to obtain relevant licences, clearance and other consents the Company may forthwith terminate the Contract whereupon the Company shall be released from its obligations to supply the Goods and/or Services and the Customer shall indemnify the Company in full against all losses (including loss of profit) costs and expenses incurred by the Company as a result of the termination.
- 17.2 Payment of all amounts due to the Company shall be made in Sterling prior to shipment of the Goods, or as the Company shall otherwise authorise in writing, or on such terms, in such manner and at such times as the Company shall otherwise agree in writing.

18. INTELLECTUAL PROPERTY RIGHTS

The Company shall retain copyright, design rights, trademarks and all other proprietary rights in all drawings, photographs, samples, patterns, designs, specifications and other documents or information relating to the Goods and/or Services and any variation or addition thereto prepared by the Company.

19. **TERMINATION**

- 19.1 The Customer cannot cancel or suspend the Contract unless otherwise on terms agreed by the Company in writing.
- 19.2 The Contract may (without prejudice to any other rights or remedies) be suspended or terminated by the Company forthwith if the Customer has a bankruptcy order made against him or makes an arrangement for composition with his creditors, or otherwise takes the benefit of any statutory provision 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), appoints or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose of amalgamation, or has a receiver/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition present to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.
- 19.3 In the event of the Company terminating the Contract in accordance with 19.2 the Company shall have the right to suspend any further deliveries under the Contract and shall be entitled to charge for work already carried out (whether or not it has been completed), for goods and materials purchased for the Customer, for Goods and/or Services delivered to the Customer but not yet paid for and all other costs charges losses (including loss of profit) and expenses incurred in connection with these Conditions and such charges are to be immediately due from the Customer.
- 19.4 The Contract may (without prejudice to any other rights or remedies) be terminated or suspended by the Company forthwith if:
- 19.4.1 payment has not been made by the Customer on the due date in accordance with 10.1; or
 - 19.4.2 anything analogous to any of the foregoing under these Conditions under the laws of any jurisdiction occurs in relation to the Customer.

20. **GENERAL**

- 20.1 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.
- 20.2 If any provision of the Contract is found by any court, tribunal 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 provisions shall continue in full force and effect.
- 20.3 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.
- 20.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 20.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.