

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS FOR THE PURPOSE OF THESE CONDITIONS:** "the Company" shall mean Barkell Limited; "the Purchaser" shall mean the party who buys or agrees to buy the Goods; "the Goods" shall mean the items supplied under the contract of sale by the company, including its own products and services and those supplied by the Company as agent.
2. **OFFER/ACCEPTANCE** Subject to any variation under Condition 3 hereof all contracts whether oral or in writing for the supply of Goods excluding erection are entered into by the Company only upon these conditions of sale to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document) and no contract shall be deemed to have been concluded between the Company and the Purchaser unless and until the Company has accepted the Purchaser's order either expressly or by necessary implication by supplying the Goods.
3. **VARIATION** No variation of or additions to these conditions of sale shall be effective unless in writing and signed for on behalf of the Company. Such written variation shall take precedence over any confliction term contained herein.
4. **PRICE AND PRICE INCREASES** The contract price of the Goods is based upon the cost to the Company at the date of its quotation for materials, labour and all other expenses and of conforming to any statutory regulation or requirements as may be in force, and is set out in such quotation. The Company reserves the right to unilaterally vary the quoted contract price by prior written notice to the Purchaser (to take account of any upward variation in the aforesaid costs) between the date of the quotation and the date of acceptance of the order. The Company may unilaterally increase the contract price by prior written notice to the Purchaser (to take account of any upward variation in the aforesaid costs) after the date of acceptance of the order, but in such circumstances the Purchaser shall be entitled to cancel the contract without liability if so wishes, as long as it does so promptly on receipt of the notice.
5. **REPRESENTATIONS** Any technical descriptions or other matters of whatever kind contained in any literature or advertisement published by the Company or on behalf of the Company by its agent shall not be deemed to be and shall not constitute any representation or warranty of any kind whatsoever in relation to the Goods or any part thereof.
6. **TECHNICAL DATA** At the request of the Purchaser the Company will at reasonable additional cost to the former (payable at the same time and upon the same terms as the contract price):
 - a. Supply certified drawings and/or weights and dimensions relating to the Goods; and/or
 - b. Visit any site for any purpose connected with the contract or with the Goods.
7. **COPYRIGHT** All drawings, specifications, literature and any other materials prepared by or on behalf of the Company and the copyright therein or in any part thereof is the property of the Company. No part of any such drawing, specification or literature shall be reproduced without prior written consent of the Company; all such drawings, specifications and literature are confidential and the contents of the same shall not be disclosed to any third parties without the prior written consent of the Company.
8. **COPYRIGHT INDEMNITY** Insofar as the Company manufactures or supplies any Goods in accordance with any specification drawing or design provided by or on behalf of the Purchaser and the goods or their said manufacture or supply constitute any infringement of any patent or copyright the property of any person then the Purchaser shall indemnify and keep the Company indemnified against any claim, damage, loss or expenses made against or suffered by it arising out of or in connection with such infringement.
9. **DELIVERY/COLLECTION**
 - a. Times and dates of delivery shall not be of the essence of the contract and the Company shall not be liable for any loss, expenses, damage or claim whatsoever and howsoever arising, resulting from any delay in delivery howsoever such delay is caused.
 - b. Subject to (a) above the Company shall deliver Goods to the site or such other place by such date for delivery as agreed between the parties, and where it cannot deliver by such date for any reason, it shall deliver the Goods within a reasonable time.
 - c. If the contract provides for the Goods to be collected by or on behalf of the Purchaser the Company shall give the Purchaser notice of the date when and the place where the Goods will be ready for collection and delivery shall be deemed to take place upon the date and at the place so notified.
 - d. Without prejudice to the foregoing, if the Purchaser fails to collect the Goods from the Company's premises within 14 days after receiving notification from the Company that the same are ready for collection then any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Company any extra expense or costs incurred by it in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date upon which they should have been collected until the date of actual collection. The Company may issue an invoice for the Goods on the date upon which the Goods should be collected and payment of such invoice shall be in accordance with Condition 14 hereof.
 - e. If the contract provides for the Company to consign the Goods to a United Kingdom mainland destination the delivery shall be deemed to take place when the Goods are handed over at the agreed destination.
 - f. If the contract provides for the Company to consign the Goods to a destination outside the United Kingdom mainland then delivery shall take place as has been agreed between parties.
 - g. Should the contractual delivery date be delayed or postponed at the Purchaser's request or the Purchaser otherwise fails to take delivery on the due date for delivery the Company may issue an invoice for the Goods as if such delivery date had not been delayed or postponed and payment of such invoice shall be due in accordance with Condition 14 hereof. In such a case the Goods shall be deemed for all purposes (including warranty) as being delivered by the Company to the Purchaser on the date originally agreed for delivery and any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Company any extra expense or cost incurred by it in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date originally agreed for delivery until the date of actual delivery.
 - h. In the case of Goods consigned by the Company to a United Kingdom mainland destination the Purchaser shall provide safe means of access to the place of delivery and all means necessary to unload the Goods and shall be responsible for unloading the Goods. The Purchaser shall reimburse the Company any extra expense or cost incurred by it in consequence of any default hereunder on the part of the Purchaser.
 - i. If the Goods or any part thereof consigned by the Company to a United Kingdom mainland destination are received in a damaged condition or if any part of the consignment is not received the Purchaser shall advise the Company within 24 hours of receipt of the Goods or other part thereof and shall confirm the same to the Company in writing within three days of such receipt otherwise the Company will accept no responsibility for such damage or loss.
 - j. If within 28 days of the receipt by the Purchaser of notice from the Company that the Goods have been despatched, no part thereof has been received by the Purchaser then the latter shall immediately advise the Company and confirm the same to the Company within three days thereafter otherwise the Company will accept no responsibility for any loss of the Goods
10. **RISK** All risk in the Goods whatsoever shall pass to the Purchaser on delivery.
11. **RETENTION OF TITLE**
 - a. Goods supplied by the Company shall remain the sole and absolute property of the Company until such time as:
 - A. the Goods have been paid in full.
 - B. all other monies due to the Company from the Purchaser have been paid to the Company but shall be at the Purchaser's risk from the time of delivery to it and the Purchaser shall:
 - I. until the Goods are paid for or returned to the Company be responsible for and adequately insure the Goods in the name of and for the benefit of the Company against loss or damage arising from any cause whatsoever in their full replacement value and shall produce to the Company on demand the policies of such insurance and the receipts for premiums paid thereon
 - II. keep the Goods separate from all property of other persons in an area set aside for such purpose and stored in accordance with recommendations made from time to time by the Company.
 - III. at all times keep a separate account of the Goods and supply to the Company upon request full details of the Goods or any part thereof including details of any part of the Goods which has been utilised or sold by the Purchaser, its servants or agents;
 - IV. hold the entire proceeds of sale of the Goods or any part thereof which are used or sold by the Purchaser in trust for the Company in a separate bank account and not mix them with any other funds.
 - b. The Purchaser acknowledges that it is in possession of the Goods as bailee and in a fiduciary capacity for the Company until such time as said items are paid for in full by the Purchaser.
 - c. The Purchaser grants the Company an irrevocable license to enter at any time any vehicles or premises owned or occupied by the Purchaser or in its possession for the purpose of repossessing and removing any Goods the property in which has remained with the Company under this Condition 11.
12. **TESTS AND INSPECTION**
 - a. Any tests of the Goods or any art thereof undertaken by the Company at the request or on the instructions of the Purchaser shall be at the expense of the latter who shall reimburse the Company the cost thereof at the same time and upon the same terms as payment of the contract price.
 - b. Without prejudice to the foregoing if the Purchaser requires any such test to be witnessed by him or by any representative of his then the Company will give to the Purchaser reasonable notice in writing of the date and place thereof. If the Purchaser or his representative fails to attend the same on the date and at the place so notified the Purchaser shall not be entitled to take any exception to the method, nature, extent, or results thereof and shall be bound by such results and shall reimburse the Company with the costs of such test..
13. **PACKAGING** Goods to be delivered by the Company whether in or outside the United Kingdom will be packed in a manner suitable for the protection of the Goods under normal transport conditions and for dry indoor storage for up to three months from the date of such delivery provided that the packaging is not damaged or disturbed. Goods to be delivered outside the United Kingdom may be packed in some other manner agreed in writing between the parties and will be at the extra cost of the Purchaser payable at the same time and in the same manner as the contract price. All packaging will be non-returnable.
14. **PAYMENT**
 - a. Unless otherwise provided for in the contract the Purchaser shall pay for the contract price of the Goods and any other costs, charges or expenses provided for by these conditions forthwith upon delivery of the Goods, or for approved credit accounts with the Company within 30 days from the date of the invoice. Any payment not settled by the end of the month following the month in which delivery is made will be liable to a surcharge of 2.5% of the invoice value for every month in which the payment is overdue.
 - b. The purchaser shall not be entitled to make deduction from any amount due to the Company in respect of any off-set or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by the Company.
 - c. Without prejudice to any other rights, failure to pay the contract price of the Goods or part there of or other monies payable by the Purchaser to the Company will also entitle the Company at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any contract to which these conditions apply, either in whole or in part, by notice in writing to the Purchaser and without incurring any liability to the Purchaser for any loss caused by such a delay or cancellation.
 - d. The contract price of the Goods shall become immediately due and payable in the event that the Purchaser goes into liquidation or administration or a receiver of its assets or any part thereof is appointed or any petition is presented for its winding-up or it enters into any scheme of arrangements with its creditors.
 - e. All amounts due to the Company are payable in pounds sterling unless agreed otherwise by the Company.
15. **CANCELLATION** No order which has been placed with the Company may be cancelled by the Purchaser except with the agreement, in writing, of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation..
16. **WARRANTY**
 - a. The Company warrants the Goods in the manner set out in this Condition 16 and (where attached to these terms of sale) in the warranty procedure document with the type of warranty cover set out in the quotation.
 - I. Subject to the terms of the warranty procedure document, the Company will repair or replace as it shall in its sole discretion think fit any part of the Goods which has been manufactured and commissioned by it which proves to be defective within a period of 12 months of the date on which the Goods are commissioned or 18 months of the date on which the goods are ready for delivery or the date of invoice whichever is the earlier, and this shall be the Purchaser's sole remedy in respect of any defective Goods.
 - II. If the Company does not perform commissioning of the goods, then warranty is limited to replacement of defective parts only for a period of 12 months from the date of delivery or the date of invoice, whichever is the earlier.
 - III. The Company reserves the right to vary the period and conditions of warranty in individual sales quotations, in which case the period and conditions set out in the individual quotation shall supersede those set out in this Condition 16.
 - IV. The Company shall not be liable to repair or replace any part of the Goods unless and until it is satisfied that the Goods have since delivery been used, installed, operated and maintained in accordance with good engineering practice and/or any instructions or advice given by the Company and that any such defect is not attributable to misuse or misapplication or to improper inadequate storage of the Goods or any part thereof or storage thereof for more than three months.
 - V. Further, the Company shall incur no liability under this warranty unless the Purchaser returns any defective Goods within 21 days of any defect becoming apparent and unless the Purchaser provides the Company promptly with all relevant information concerning the Goods, such defects, and the user, installation, operation, maintenance and storage thereof since their delivery or any other relevant information that the Company may reasonably require.
 - VI. In instances of 'parts only' warranties, the cost of removing or dismantling any defective part to be replaced under this warranty, its carriage to the Company's premises and its reinstallation shall be borne by the Purchaser.
 - VII. The cost of non-express carriage in the United Kingdom of the repaired or replacement part back to the Purchaser for reinstallation where the Company has accepted liability to repair or replace under this warranty shall be borne by the Company.
 - VIII. Any spare part supplied by the Company to the Purchaser under the warranty shall be warranted for the unexpired period of the warranty or three months from delivery whichever period is longer, with the exception of compressors which shall be warranted for 12 months from delivery.
 - IX. Any spare part supplied by the Company to the Purchaser outside the warranty period shall be warranted for three months from delivery or invoice whichever is the earlier.
 - X. Subject to Clause 17(a), all representations, terms, conditions and warranties not contained in these conditions of sale in respect of the Goods, whether statutory or otherwise and whether expressed or implied are hereby expressly excluded insofar as permitted by law.
 - XI. In the instances of 'parts and labour' warranties, the warranty shall exclude the cost of any specialist access or lifting equipment, which shall be paid for by the Purchaser.
 - b. **LIMITATION OF LIABILITY**
 - a. Nothing in these conditions of sales shall exclude either party's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation nor where liability cannot be limited or excluded by law.
 - b. Subject to Condition 17(a), the Company's total liability in contract, tort, misrepresentation or otherwise arising in connection with the performance or contemplated performance of any contract to which these terms and conditions apply shall be limited to the greater of the price of Goods under the order which has given rise to claim, or the amount that the Company may reasonably recover from its insurers under any policy of insurance that it has in force.
 - c. Subject to Condition 17(a) and 17(b), the Company shall not be liable for:
 - I. any indirect or consequential loss or damage;
 - II. any loss of profit; loss of business; or depletion of goodwill
 - III. any costs, expenses or other claims for consequential compensation;
 - IV. any defect which may occur in any prior installation to which the Company's equipment may be connected;
 - V. any defect to the extent that it is caused by incorrect installation (where not installed by the Company) or lack of or poor maintenance of the Goods.
18. **INDEMNITY** The Purchaser shall indemnify the Company in respect of any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the contract or the Goods or their storage, installation, use, operation or maintenance save where the same is caused solely by the negligence of the Company.
19. **DETERMINATION** If the Company is prevented from performing the contract by any cause beyond its control whatsoever and wheresoever arising then it may by notice in writing to the Purchaser determine this contract and upon receipt thereof by the Purchaser the same shall forthwith determine. In such event the Purchaser shall pay to the Company all reasonable costs incurred by it up to the date of the said notice in and about its partial and/or attempted performance of its obligations hereunder but subjected thereto neither the Company nor the Purchaser shall be under any other liability to the other in connection with the contract.
20. **SEVERABILITY** Insofar as any provision of this contract or any part thereof shall be found or deemed void, voidable, invalid, ineffective or unenforceable, such defect shall not affect the remainder of the contract which shall be construed as if the defective part or parts had been excluded there from at the time when the contract was entered into.
21. **NOTICE** Where under any terms and conditions contained herein notice is required to be given by either party to the other such provision shall be satisfied by a written, typed notice signed by a person authorised by the relevant party and transmitted either by post, facsimile or email to the Registered Office of such party where it is a company and to the address notified to the Company where the Purchaser is unincorporated.
22. **TRADEMARKS**
 - a. The Purchaser shall ensure that any trademarks or other words or marks affixed to or used in relation to the Goods are not obliterated, obscured or omitted without the Company's prior written consent.
 - b. The Purchaser shall not add, affix or use any additional words or marks to or in relation to the Goods without the Company's prior written consent.
23. **GOVERNING LAW** The contract shall be governed by English Law and any dispute shall be heard by the English courts.