

Kwik-Step Limited - Conditions of Sale (August 2016)

1. Definitions

- 1.1 **"Buyer"** means the person, firm, company or entity to whom the Seller sells the Goods.
- 1.2 **"Conditions"** means the terms and conditions set out in this document as may be amended by the Seller from time to time.
- 1.3 **"Contract"** means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.4 **"Force Majeure Event"** has the meaning given to it in clause 11.1.
- 1.5 **"Goods"** means the goods, materials or equipment sold by the Seller to the Buyer together with any attendance and other ancillary services.
- 1.6 **"Seller"** means Kwik-Step Limited, a private limited company incorporated in England and Wales under company number 03439608 and having its registered office at Unit 5, Albion Dockside, Hanover Place, Bristol, BS1 6UT.

2. Basis of Contract

- 2.1 A quotation or proposal by the Seller shall only constitute an invitation to treat.
- 2.2 All orders submitted by the Buyer are subject to acceptance by the Seller and the Contract is made when the Seller confirms acceptance of the order to the Buyer or the Seller confirms to the Buyer that the goods have been despatched (in either case by post, fax, e-mail, telephone or text message).
- 2.3 These Conditions shall apply to every Contract for the sale of Goods by the Seller to the Buyer to the exclusion of any other terms and conditions subject to which any order is made or purported to be made by the Buyer.
- 2.4 The Buyer acknowledges that it does not rely on any representations made by the Seller, its employees or agents when entering into the Contract except those specifically relating to the Contract and confirmed by the Seller in writing.
- 2.5 The Buyer acts entirely at its own risk upon any advice, recommendation or proposal by the Seller, its employees or agents as to the use, application, dimensions, configuration, installation or storage of the Goods and the Seller shall not be liable for any such advice, recommendation or proposal.
- 2.6 Any mistake, typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice, drawing or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders

- 3.1 The Seller reserves the right to make any changes to the specification of the Goods (including the designs, sizes, weights or other particulars) which do not materially affect their quality or performance or as may be required by any applicable statutory or regulatory requirements or design standards.
- 3.2 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 Buyer then the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person or entity which results from the Seller's use of the Buyer's specification.

- 3.3 No order which has been accepted by the Seller can be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Seller prior to or as a result of the Buyer's cancellation.

4. Price

- 4.1 The price of the Goods shall be in accordance with the Seller's valid written quotation, or where no price has been quoted, the price listed in the Seller's price list current at the date of acceptance of the Buyer's order. Prices quoted are valid for thirty (30) days after which they may be altered by the Seller without notice.
- 4.2 Unless otherwise stated all prices are exclusive of any applicable VAT and of carriage and delivery charges which the Buyer shall pay to the Seller in addition.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery (by post, fax, e-mail, telephone or text message) to increase the price to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specifications requested by the Buyer or any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5. Payment

- 5.1 The Seller may conduct checks on new and existing Buyers using third party credit reference agencies. Where an individual or partnership, the Buyer agrees that the Seller may pass personal data to such third parties for credit referencing purposes only and that the Seller may keep a record of any searches.
- 5.2 The Seller shall be entitled to invoice the Buyer on despatch of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take or delays in taking delivery, in which event the Seller shall be entitled to invoice the Buyer at any time after the Seller notifies the Buyer that the Goods are ready for despatch or collection.
- 5.3 The Buyer shall pay the Seller's invoice in full within thirty (30) days of the date of the invoice, or such shorter period as the Seller may specify (for example where the Goods are to be exported, have been made to order or customised, or on the basis of credit reference searches) and the Seller shall be entitled to recover the full amount invoiced notwithstanding that delivery or collection may not have taken place and that property in the Goods has not passed to the Buyer.
- 5.4 Where Goods are to be delivered (or collected) in instalments the Seller shall be entitled to invoice the Buyer on despatch of each instalment (or on notification by the Seller to the Buyer that the Goods are ready for despatch or collection by post, fax, e-mail, telephone or text message) and payment of all invoices shall be a condition of delivery or collection of subsequent instalments.
- 5.5 Payments by credit card shall incur a handling fee of three per cent (3%) subject to VAT which must be paid at the time of payment for the Goods. Where the Buyer supplies credit card details to the Seller, these shall not be stored by the Seller or shared with any third parties.
- 5.6 Time of payment shall be of the essence of the Contract. If the Buyer fails to make payment in full of any invoice on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- a) cancel the Contract or suspend any further deliveries to or collections by the Buyer; and/or
 - b) appropriate any payment made by the Buyer for such of the Goods (or any other Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit and notwithstanding any purported appropriation by the Buyer; and/or
 - c) withdraw any credit terms on other pending invoices, which shall become due and payable immediately; and/or

- d) withdraw any credit terms offered in respect of pending quotes and future orders until further notice; and/or
- e) charge all sums (including interest) permitted under the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013; and/or
- f) charge an additional fixed sum of £600 in the event that a statutory demand is issued to the Buyer.

6. Delivery & Installation

- 6.1 Where the Buyer takes delivery of the Goods at the Seller's premises the Buyer shall bear the costs of and be responsible for making all arrangements relating to collection and transit of the Goods from the Seller's premises.
- 6.2 Where the Buyer does not take delivery of the Goods at the Seller's premises, it is the Buyer's responsibility to ensure that there is adequate access for delivery vehicles, to unload the Goods and to ensure that appropriate staff and equipment for unloading are available at the location and time of delivery (unloading will normally require a counterbalance forklift truck with a minimum safe working load of 1,500 kgs).
- 6.3 Any dates quoted for delivery are approximate only and time for delivery shall not be of the essence of the Contract. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.4 If the Seller fails to deliver the Goods other than for any reason set out in clause 6.3, the Seller's liability shall be limited to the price of the Goods.
- 6.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Buyer fails to take delivery of the Goods (or fails to give the Seller adequate delivery instructions on reasonable notice) at the time stated for delivery, then without prejudice to any other right or remedy available to the Seller, the Seller is entitled at its option to:
 - a) store the Goods until actual delivery and charge the buyer for the costs (including insurance) of storage; or
 - b) sell the Goods and retain the proceeds and, after deducting all storage and selling expenses, charge the Buyer for any shortfall below the price under the Contract.
- 6.7 The Buyer shall be solely responsible for site analysis and preparation (including site survey and investigation, slope stability, geotechnical assessment and detection and avoidance of buried services and obstructions) and installation of the Goods (including risk assessment, the method statement, supervision and project management) in accordance with the installation instructions published on the Seller's website together with any installation notes and drawings provided by the Seller and using the installation toolkit available from the Seller. At the Buyer's request, the Seller may attend the site at which the Goods are to be installed or another agreed location to provide guidance on the installation of the Goods generally and not in any supervisory or managerial capacity.

7. Export

- 7.1 Where Goods are sold for export from the United Kingdom, the price of the Goods shall be deemed to be the "free on board" price and the Buyer shall accordingly be responsible for complying with any legislation or regulations governing export of the Goods from the United Kingdom and importation of the Goods into the country of destination and for the payment of any duties and tariffs on the Goods.

- 7.2 Unless otherwise agreed in writing, the Goods shall be delivered “free on board” the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 7.3 The Buyer shall be responsible for arranging inspection of the Goods before shipment and the Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

8. Risk and Property

- 8.1 Risk of loss or damage to the Goods shall pass to the Buyer:
- a) where the Buyer is to take delivery of the Goods at the Seller’s premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - b) where the Goods are to be delivered otherwise than at the Seller’s premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Buyer:
- a) the Buyer shall not install the Goods on or affix the Goods to any land or property;
 - b) the Buyer shall hold the Goods as the Seller’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties, properly stored, protected, insured and identified as the Seller’s property; and
 - c) provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods (at the Buyer’s sole cost and expense) and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods, any costs of repossession being payable by the Buyer.
- 8.4 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 property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Liability and Warranty

- 9.1 The Seller shall be under no liability to the Buyer in respect of:
- a) any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - b) fair wear and tear, wilful damage, negligence by the Buyer or any third party, abnormal working conditions, failure to follow the Seller’s instructions and advice (whether oral or in writing), misuse, alteration or repair of the Goods without the Seller’s approval;
 - c) any warranty, condition or guarantee if the total price for the Goods has not been paid by the due date for payment;
 - d) any attendance by the Seller’s personnel at the installation site or any other location in accordance with clause 6.7; and
 - e) parts, materials or equipment not supplied by the Seller.

- 9.2 Subject to clause 7.3 and the exclusions in clause 9.1 above, the Goods supplied by the Seller to the Buyer shall correspond with any specification of the Goods and be free from defects in design, material and workmanship and remain so for a period of twelve (12) months from the date of delivery or tendered delivery of the Goods. Unless the Buyer notifies the Seller in writing on or before the expiry of such twelve (12) month period, the Seller shall have no liability for any failure of the Goods to meet the specification or any defect in respect of the Goods.
- 9.3 Where any valid claim in respect of any of the Goods is notified to the Seller in accordance with clause 9.2, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and the Seller shall have no further liability to the Buyer.
- 9.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods.
- 9.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any Force Majeure Event.
- 9.6 Except as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.7 The Seller may provide a proposed configuration for the Goods free of charge for consideration by the Buyer. In all such cases this will be indicative only and will be provided without any liability on the part of the Seller and expressly on the basis that the Buyer will review it, amend it or request amendments by the Seller (if required) and then adopt it as the Buyer's design for its installation of the Goods.
- 9.8 The Seller shall not in any circumstances be regarded as "Principal Designer" or "Designer" for the purposes of the Construction (Design and Management) Regulations 2015 and where the Seller provides a proposed configuration for the Goods, the Buyer shall be responsible for and accept any liability arising from obtaining the approval of a person appointed or acting as "Principal Designer" or "Designer" under such Regulations.
- 9.9 Unless otherwise specified by the Buyer and confirmed in writing by the Seller the Goods are manufactured and supplied to fulfil the requirements of Consequence Class 1, Service Category 1, Production Category 1 and Execution Class 1 as defined in BS EN 1090-2: 2008+A1:2011.
- 9.10 The Buyer shall be responsible for ensuring compliance with any and all laws, bye-laws, legislation and any other relevant regulations, policies, procedures and standards (whether or not instituted by law) applicable or potentially applicable to the installation and use of the Goods by the Buyer.

10. Insolvency of Buyer

- 10.1 This clause applies if:
- a) the Buyer (being any individual or partnership) makes any voluntary arrangement with its creditors or becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
 - b) the Buyer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any

partner to whom any of the foregoing apply; or

- c) an encumbrancer takes possession of, or a receiver is appointed over any of the property or assets of the Buyer; or
- d) the Buyer ceases, or threatens to cease, to carry on business or; or
- e) the Seller reasonably anticipates that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller:

- a) the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer;
- b) the Seller shall be entitled to claim and recover all costs of work in progress for bespoke orders and customised parts; and
- c) if any Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. General

- 11.1 The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event beyond the Seller's control which could not have been foreseen or, if it could have been foreseen, was unavoidable including but not limited to strikes or other industrial disputes (whether involving its own workforce or a third party's), failure of any transport or communications networks, acts of God, epidemic or pandemic, terrorism or civil commotion, breakdown of plant, machinery or equipment, power failure, extreme adverse weather conditions or default or delay of suppliers or contractors ("**Force Majeure Events**").
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall, unless stated otherwise, be given in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 11.3 No waiver by the Seller of any breach of any provision of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 No variation to these Conditions shall be binding unless confirmed in writing by the Seller.
- 11.5 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller. The Seller may amend these Conditions from time to time and make them available on its website (www.kwik-step.com/conditions-of-sale.html), which the Buyer is advised to check regularly.
- 11.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 11.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.9 The Contract shall be governed by the laws of England and Wales, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.