

CONDITIONS OF PURCHASE

1. Definitions. (i) **'Buyer'** shall mean Vacuumatic Limited (company number 05812970) whose registered office is 8 Brunel Way, Colchester, Essex, England CO4 9QX.

(ii) **'Conditions'** shall mean the standard conditions of purchase set out in this document. (iii) **'Contract'** shall mean the contract between the Buyer and the Seller, consisting of the Purchase Order, these Conditions and any other document or parts thereof specified in the Purchase Order. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.

(iv) **'Delivery Address'** shall mean the address stated in the Purchase Order.

(v) **'Goods'** includes all goods covered by the Purchaser Order whether raw materials, processed materials or fabricated products.

(vi) **'Purchase Order'** shall mean the Buyer's purchase order to which these Conditions are annexed.

(vii) **'Seller'** shall mean the person, firm or company to whom the Purchase Order is issued.

(viii) **'Services'** shall mean the services (if any) described in the Purchase Order.

2. Acceptance. (1) These Conditions shall apply to the Contract to the exclusion of any terms and conditions of the Seller. No terms or conditions of the Seller shall be binding on the Buyer unless expressly agreed to by the Buyer in writing.

(2) Each Purchase Order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to the Conditions and no Purchase Order shall be accepted until the Seller either expressly by giving notice of acceptance, or implied by fulfilling the Purchase Order, in whole or in part accepts the offer.

(3) No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of Purchase Order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

3. Variations. Neither the Buyer nor the Seller shall be bound by any variation or addition to these Conditions and the Seller shall not vary or alter the Goods or any specifications in connection therewith, except as agreed by both parties in writing signed by the authorised representatives of the Buyer and the Seller. The failure of the Buyer to exercise or enforce any right conferred upon it/him hereunder shall not be deemed to be a waiver of any such right or operate to bar the exercise of enforcement thereof at any time or times thereafter. No waiver by the Buyer of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provisions.

4. Responsibility. The Seller shall be responsible for any errors, or omissions in any drawings, calculations, packing details or other particulars supplied by it/him, whether such information has been approved by the Buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the Buyer.

5. Quality and description. (1) The Seller warrants that the Goods shall on delivery and for a period of 24 months from the date of delivery:

(a) be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the particulars stated in the Purchase Order and the specification and any instructions given by the Buyer;

(b) be free from defects in design, materials and workmanship;

(c) be suitable for the purposes intended by the Buyer, as to which the Seller hereby acknowledges that it/he has had due notice.

(2) The Buyer's rights under these Conditions are in addition to statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.

(3) If any Goods or Services supplied to the Buyer shall not be in accordance with the particulars stated in the Purchase Order or the specification or any instructions given by the Buyer or shall not be up to sample, or shall be in any way defective, or do not conform with any warranty in condition 5 (1), the Buyer in addition and without prejudice to any other remedy available to it may at its option either:

(a) rectify, repair or replace the Goods (or such defective part) with the Seller being responsible for all liability, losses, costs and expenses arising out of the rectification, repair or replacement, or

(b) return the Goods at the risk and expense of the Seller for rectification, repair or replacement free of charge to the Buyer, or

(c) cancel the Contract in whole or in part and the Buyer shall be repaid all monies paid to the Seller in relation to any such non-compliant Goods. Any cancellation shall be without prejudice to the rights of the parties in respect of any breach of contract occurring prior to termination or any rights expressed to survive cancellation or termination of the Contract.

6. Inspection and testing. (1) At any time prior to delivery the Seller shall if the Buyer so requests, permit the Buyer and its authorised representatives to inspect and test the Goods and the materials used therein at all reasonable times during and after completion of their manufacture. (2) The Seller shall incorporate a condition to this effect in all contracts made with authorised sub-contractors.

(3) No lack of complaint or approval given on or after any such inspection or test shall be deemed to constitute a waiver of any rights or remedies of the Buyer or an acceptance of the Goods or to relieve the Seller from its obligations under the Contract. **(4)** If the results of any inspection or testing causes the Buyer to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or any specifications supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Buyer shall have the right to require and witness further testing or inspection.

7. Drawings, Specifications and know-how. Any specifications, plans, drawings, patterns, or designs and all intellectual property rights in these or any other data supplied by the Buyer to the Seller in connection with the Contract shall remain the property of and shall on demand be returned to the Buyer and any information derived therefrom or otherwise communicated to the Seller in connection with the Contract shall be regarded by the Seller as secret and confidential and shall not without the consent of the Buyer be published or disclosed to any third party or made use of by the Seller except for the purpose of implementing the Contract.

8. Patterns Dies and Tooling. Unless otherwise agreed in writing, the Seller shall not use any materials, patterns, dies, moulds, or other tooling (hereinafter called 'Buyer's Supplies') supplied by the Buyer nor shall it knowingly permit them to be used by anyone else for or in connection with any purpose other than the manufacture of the Goods. All such Buyer's Supplies shall be, or remain, the property of the Buyer and shall be immediately returned to it on demand. The Seller shall ensure that any authorised sub-contractors employed by it

shall observe similar conditions. The Seller shall indemnify the Buyer against all claims, demands, costs, charges and expenses resulting from the loss or damage to any such Buyer's Supplies howsoever caused. The Seller shall hold the Buyer's Supplies at its own risk in safe custody and maintain and keep the Buyer's Supplies in good condition until returned or disposed of in accordance with the Buyer's written instructions.

9. Delivery and warranty. **(1)** Unless otherwise stated in the Purchase Order and subject to any special erection provisions where applicable, the Seller shall deliver the Goods properly packed and carriage paid to the Delivery Address on the date or within the period specified in the Purchase Order and shall off load the Goods at its own risk and expense as directed by the Buyer. Acceptance of the Purchase Order constitutes confirmation of the delivery time specified in the Purchase Order. Delivery time shall be of the essence of the Contract. It shall, without prejudice to any other right or remedy it may have, be at the sole option of the Buyer to cancel the Contract (in whole or in part), and claim damages or merely to claim damages for breach of contract if the delivery time is not met. Deliveries shall only be accepted by the Buyer in normal business hours.

(2) Where the date of delivery of the Goods, or performance of the Services, is to be specified after placing the Purchase Order, the Seller shall give the Buyer reasonable notice of the specified date.

(3) The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of the Purchase Order, numbers of packages and contents, and in the case of a part delivery the outstanding balance remaining to be delivered.

(4) Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be

construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

(5) Without prejudice to clauses 5 (Quality and description), 15 (Patent rights), 19 (Seller's Indemnity) hereof the Seller shall indemnify the Buyer against all loss, liability, claims, demands, costs, charges and expenses resulting from the Goods being defective during the period of twelve months from putting into service or eighteen months from delivery whichever is the shorter, where the defects occur under proper use. The Seller will repair or replace free of charge such defective Goods bearing all carriage, insurance and handling charges which may be thereby incurred.

10. Packing. Packages and packing materials shall not be returnable unless their return has been asked for at or before the time of delivery and they are charged as a separate item on the invoice. Full credit shall be given for the returnable packages and packing materials returned, carriage forward, to the Seller in good condition.

11. Force Majeure The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer (force majeure event) including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protects, riot, civil commotion, fire, explosion, flood, 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. If the force majeure event prevails for a continuous period of more than

90 calendar days, any party may terminate the Contract by giving not less than 14 calendar days' written notice to the other. On expiry of the notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to termination.

12. Passing of risk and property. (1) Unless otherwise agreed in writing, the risk and property in the Goods will pass to the Buyer when the Goods have been delivered to the Delivery Address in accordance with the Contract (including off loading and stacking). Thereafter the Goods shall be at the risk of the Buyer, provided that where payment is to be made by instalments the property in the Goods shall pass to the Buyer upon payment of the first instalment of the price and shall thereafter remain the absolute property of the Buyer. (2) If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess shall remain at the Seller's risk and be returnable at the Seller's expense.

13. Damage or loss in transit. (1) The Buyer shall not be deemed to have accepted the Goods until it has had 5 days to inspect them following delivery. The Buyer shall have the right to reject the Goods as though they had not been inspected for 10 days after any latent defect in the Goods has become apparent. (2) The Seller shall promptly make good free of charge to the Buyer any loss of or damage to the Goods in transit.

14. Prices and Payment. (1) Prices quoted are fixed and firm and inclusive of packing, packaging, shipping, carriage, insurance and delivery of the Goods (unloaded and stacked) to the Delivery Address. No increase in price may be made (whether on account of an increase in material,

labour, transport costs, rates of exchange or otherwise) without the prior written consent of the Buyer. All Goods shall be invoiced on the date of despatch with a separate invoice to be forwarded to the Buyer in respect of each particular consignment and quoting the Buyer's order number. (2) Payment of the Seller's account will be made within 60 days' of the end of the month in which the Goods and an agreed invoice are received. Time for payment shall not be of the essence. All prices are payable in Sterling unless otherwise agreed in writing. Value Added Tax where applicable, shall be shown separately on all invoices as a strictly net extra charge.

15. Patent rights (1) The Seller shall fully indemnify the Buyer against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, claims, demands, costs, damages, charges and expenses (including legal and other professional fees and expenses) arising from or incurred by reason of any infringement of any patent, registered design, trademark, trade name or copyright in any part of the world arising from the manufacture, supply or use by the Buyer or its customers of the Goods provided that this indemnity shall not apply to the extent that the said infringement is occasioned by use of: (a) technical information given to the Seller by the Buyer, or (b) designs, drawings, formulae, know-how or non-standard specifications supplied by the Buyer. (2) Any patent or other intellectual property rights arising as a result of the Purchase Order shall belong to the Buyer.

16. Assignment and sub-contracting. The Seller shall not without the consent in writing of the Buyer assign or sub-contract the whole or any part of the Contract and in every case shall notify the Buyer in writing of the names and addresses of all sub-contractors.

17. Termination and Remedies. (1) The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss. (2) The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if: (a) the Seller commits a material breach of any of the terms and conditions of the Contract; or (b) any distress, execution or other process is levied upon any of the assets of the Seller; or (c) the Seller has a bankruptcy order made against him or makes an arrangement or 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), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986),

or a resolution is passed or a petition presented to any court for the winding-up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or **(d)** the Seller ceases or threatens to cease to carry on its business; or **(e)** the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy. **(3)** The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination. **(4)** Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer : **(a)** to rescind the Purchase Order; **(b)** to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller; **(c)** at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; **(d)** to refuse to accept any further deliveries of the Goods but without any liability to the Seller; **(e)** to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and **(f)** to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

18. Safety. When the Seller's employees are required to work at a location of the Buyer, they are required to comply with such health and safety conditions and procedures, as required by statute, copies of which are available on request.

19. Seller's indemnity In addition to clauses 5 (Quality and description) and 15 (Patent rights) the Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including all professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

(a) defective workmanship, quality or materials;

(b) any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller. This Condition 19 shall survive cancellation or termination of the Contract howsoever arising.

20. Confidentiality. The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's

obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller

21. Miscellaneous. (1) The headings are inserted for convenience only and shall not affect the construction of these Conditions. **(2)** Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. **(3)** Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller or any member of its group to the Buyer or any member of its group against any amount payable by the Buyer to the Seller under the Contract.

(4) If any sum under the Contract from the Seller is not paid when due then, without prejudice to the Buyer's other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 3% per annum over National Westminster Bank PLC base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding. **(5)** Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not. **(6)** 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 provision shall continue in full force and effect.

22. Law. The Contract shall be governed by and construed in accordance with the laws of England and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.

Vacuumatic Limited 2009