

CONDITIONS OF SALE

1. Definitions. (i) **'Buyer'** shall mean the person, firm or company who purchases the Goods from the Seller.

(ii) **'Conditions'** shall mean the standard conditions of sale as set out in this document.

(iii) **'Contract'** shall mean the contract between the Seller and the Buyer for the sale and purchase of the Goods incorporating these Conditions.

(iv) **'Goods'** shall mean the goods (including any instalment of goods or any part(s) of them) which the Seller is to supply to the Buyer in accordance with these Conditions.

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

2. Application of Terms. (1) Subject to any variation under condition 2(3), the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). (2) No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. (3) Any variation or substitution of these Conditions in any document of the Buyer shall be inapplicable unless expressly accepted in writing by the Seller. (4) The international rules for the interpretation of trade terms of the International Chamber of Commerce ('Incoterms') as in force at the date the Contract is made, shall apply save where inconsistent with the Contract whose terms shall prevail. (5) The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in

the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation. (6) Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

3. Contract. No Contract shall result from any order given by or on behalf of the Buyer in relation to any quotation made by the Seller until the order has been accepted in writing by the Seller.

4. Limits of Contract. (1) The Seller's quotation includes only such Goods, accessories and work as are specified therein. Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby declared that any such sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality and does not form part of the Contract and this is not a sale by sample. (2) Any error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or document or information issued by the Seller shall be subject to correction without liability on the part of the Seller.

5. Drawings, etc. All specifications, drawings, and particulars of weights and dimensions submitted with the quotation are approximate only, and the description and illustrations contained in the Seller's catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the Contract. The copyright and all intellectual property and similar rights in all drawings provided by the Seller will at all times remain with the Seller even after payment for the Goods by the Buyer.

6. Prices. The price for the Goods shall be exclusive of Value Added Tax unless otherwise stated, which the Buyer shall be additionally liable to pay to the Seller. Prices are subject to revision at any time before a Contract is formed. Prices quoted on a standard price list are subject to revision at any time prior to despatch. Where the Seller agrees to deliver the Goods the Seller shall be entitled to add to the price and the Buyer shall pay the cost of transport, loading, unloading and stacking, any insurance and all other extra costs necessarily incurred. The Buyer shall be responsible for obtaining all import/export licences and permits required.

7. Inspection and Tests. The Seller's Goods are carefully inspected and, where practicable, submitted to standard tests at the Seller's premises work before despatch. If tests other than those specified in the Seller's quotation or tests in the presence of the Buyer or the Buyer's authorised representative are required, the Buyer shall be additionally liable to pay the Seller for these tests. In the event of any delay on the Buyer's part in attending such tests or in carrying out any inspection required by the Buyer after seven days' notice that the Goods are ready, the tests will proceed in the Buyer's absence and shall be deemed to have been made in his presence.

8. Storage. If the Seller does not receive instructions sufficient to enable despatch of the Goods within 28 days after the date of notification to the Buyer that the Goods are ready for despatch, or if the Buyer does not take delivery or arrange for storage of the Goods then, without limiting any other right or remedy available to the Seller, the Seller shall be entitled to arrange storage either at its premises or elsewhere on the Buyer's behalf and all charges for storage, for insurance or for demurrage

shall be payable by the Buyer.

9. Specification. (1) Where specifications are to be supplied to the Seller for any Goods the Buyer shall be responsible for ensuring the accuracy of the specification and shall supply such specifications in reasonable time to enable the Seller to complete delivery within the period named. All tools, dies, designs, intellectual property rights, patterns or other things used by the Seller remain the property of the Seller notwithstanding that a charge may be made towards their costs. (2) The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

10. Variation. In the event of variation or suspension of work following acceptance by the Seller of the Buyer's written instructions or if the Buyer fails to provide reasonable and prompt instructions, the Seller reserves the right, without limiting any other right or remedy available to the Seller, to vary the Contract price including any cost of delivery and the like accordingly. The Seller will advise the Buyer of any change in Contract price or costs.

11. Terms of Payment. Payment shall be made at the time or times and in the manner specified by the Seller in the quotation, and if not so specified, payment in full shall be due for the Goods, or for each item comprised in the Goods, on notification by the Seller that they are ready for despatch. In the case of export contracts payment shall be by confirmed irrevocable letter of credit in a form approved by the Seller and established within 30 days of the date of the Contract unless otherwise

agreed in writing between the parties. Unless otherwise specified in the quotation, all prices are payable in Sterling at the divisional office of the Seller (the address of which is shown in the quotation or on the Seller's website at www.vacuumatic.com) or at such other place as the Seller may at any time direct in writing. If the Buyer fails to make any payment on the date payment falls due, without limiting any right or remedy of the Seller, the Seller may charge the Buyer interest (both before and after any judgment) at a rate of 5% per annum above the National Westminster Bank plc base rate for the time being in force, until payment in full is made.

12. Goods sold F.O.B. Where Goods are sold Free.On.Board ('F.O.B'). the responsibility of the Seller shall cease immediately the Goods are placed on board ship and the Seller shall be under no obligation to give the Buyer the Notice specified in Section 32(3) of the Sale of Goods Act 1979 or any statutory modification or re-enactment thereof for the time being in force.

13. Delivery and Non-Delivery. (1) Delivery of the Goods shall be made in accordance with the method and to the premises as agreed between the parties and as set out in the acceptance of the Buyer's order given in accordance with clause 3. If no such method of delivery is agreed delivery shall be as the Seller directs. If it is agreed, or the Seller directs, the Buyer shall collect the Goods from the Seller's premises at any time after the Seller has notified the Buyer in writing that the Goods are available for collection and payment for the Goods in cleared funds has been received by the Seller in full delivery shall take place when the Buyer collects the Goods, provided that if the Buyer does not collect the Goods (or provide adequate

instructions to enable the despatch of the Goods, or otherwise accept delivery of the Goods) within 28 calendar days of being notified of their readiness for collection, the Goods will be deemed to have been delivered. (2) Unless otherwise agreed in writing by the parties the time or date for delivery named by the Seller is an estimate only and the Seller shall not be liable for (or for the consequences of) any delay and the time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time. (3) Times quoted for despatch or delivery are based upon the date of receipt by the Seller of a written order to proceed and all necessary information and drawings to enable the Seller to put the work in hand. (4) The time for despatch of delivery shall be extended by a reasonable period if delay in despatch or delivery is caused by incorrect or inadequate instructions (or lack of instructions) from the Buyer or by (but not limited to) industrial dispute or the acts or omissions of the Seller's suppliers or by any cause beyond the Seller's reasonable control. (5) The Buyer shall provide at the delivery point referred to in these Conditions and at its expense adequate and appropriate equipment and manual labour for loading/unloading the Goods. (6) If the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Seller or the Buyer (as appropriate), the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate. (7) The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. (8) Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment. (9) The

quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary. **(10)** The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received. **(11)** Any liability of the Seller 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.

14. Claim for defects damage shortage or loss. In any alleged case of damage in transit or shortage on delivery or defective goods a separate notice in writing must be given to the carrier concerned and to the Seller within 7 days of receipt of the Goods and must be followed by a complete claim in writing within 30 days of receipt of the Goods. In any alleged case of loss of Goods notice in writing must be given to the carrier concerned and to the Seller and a complete claim in writing made within 30 days of the date of consignment. Where Goods are accepted from the carrier concerned without being checked, the delivery book or delivery note or similar document of the carrier concerned must be signed 'not examined'.

15. Force Majeure. **(1)** The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of Goods ordered by the Buyer (without liability to the Buyer) if it is prevented or delayed in the carrying on of its business due to circumstances beyond its reasonable control (including without limitation acts of God, governmental actions, war or national emergency,

acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes and industrial action or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials). **(2)** If the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

16. Quality and Defects after delivery. **(1)** The Seller warrants that (subject to the other provisions of these Conditions) on delivery the Goods shall: **(a)** be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and **(b)** be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgment of the Seller. **(2)** The Seller shall not be liable for a breach of any of the warranties in Condition 16(1) if : **(a)** the Buyer makes any further use of such Goods after giving notice to the Seller of any defect; or **(b)** the defect arises because the Buyer failed to follow the Seller'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 **(c)** the Buyer alters or repairs such Goods without the written consent of the Seller. **(3)** Unless otherwise agreed in writing by the parties, following notification in writing by the Buyer the Seller will make good, by repair or at its option by the supply of a replacement, defects which, under proper use, appear in the Goods within a period of twelve calendar months after the Goods have been delivered, or fifteen months from readiness for despatch, whichever period shall first expire, and arise solely from faulty design (other than a design made, furnished or specified by the Buyer), materials

and workmanship, provided always that defective parts have been returned to the Seller if the Seller shall have so required. The Seller shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by the Seller free of charge by any method of transport at the Seller's option. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods or request repair or replacement, and the Seller shall have no liability for such a defect or failure. The Seller will have no liability to replace or repair any defective Goods where such defect occurs directly or indirectly from misuse of the Goods including without limit not to use the Goods in a manner consistent with any manufacturer's instructions or in accordance with good commercial practice and in compliance with all law, rules and regulations. **(4)** If the Seller complies with Condition 16(3) it shall have no further liability for a breach of any of the warranties in Condition 16(1) in respect of such Goods.

17. Determination of Contract. If the Buyer shall commit a breach of the Contract or fail to comply with any of any other of the Buyer's obligations to the Seller or if any distress or execution (or similar or equivalent process in any foreign jurisdiction) shall be levied upon the Buyer's property or assets or if the Buyer shall make or offer to make any form of arrangement or composition with creditors or commit any act of bankruptcy (or its equivalent in any foreign jurisdiction) shall be presented or made against the Buyer or if the Buyer is a corporation (by whatever name called) and any resolution or petition (or its equivalent in a foreign jurisdiction) to wind up such corporation's affairs or business shall be passed or presented or if a receiver or administrative receiver, administrator or the like (of his equivalent in any foreign jurisdiction by whatever name called) over such corporation's undertaking property or assets or

any part thereof shall be appointed, the Seller shall have the right to immediately determine any Contract then subsisting and upon written notice of such determination being posted to the Buyer's last known address any subsisting Contracts shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise.

18. Indemnity. (1) The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with work done in accordance with any specifications supplied by the Buyer.

19. Limitation of liability Subject to Conditions 13 (Delivery and non delivery) and 16 (Quality and Defects after delivery) the following clause sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of : (a) any breach of the Conditions; (b) any use made or resale by the Buyer of any Goods, or of any product incorporating the Goods, and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract. (2) All warranties, conditions and other terms implied by statute or common law (save conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. (3) nothing in these conditions excludes or limits the liability of the Seller: (a) for death or personal injury caused by the Seller's negligence; or (b) under section 2 (3),

Consumer Protection Act 1987; or (c) for any matter which it could be illegal for the Seller to exclude or attempt to exclude its liability; or (d) fraudulent misrepresentation.

(3) Subject to Conditions 19 (1) and 19 (2) the Seller's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance or contemplation of performance of the Contract shall be limited to the Contract price and the Seller shall not be liable to the Buyer for loss of profit, loss of business or depletion of goodwill, in each case whether direct, indirect or consequential or any claims for consequential compensation (howsoever caused) which arise out of or in connection with the Contract.

20. Materials. Contracts and orders are accepted subject to the Seller receiving any necessary licence to purchase or to use the required materials and to the Seller being able to obtain such materials.

21. Variations in cost. The Seller reserves the right, on giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Seller which is due to any factor beyond the reasonable control of the Seller (such as, without limitation, any rise in the rates of wages payable to labour, in the cost of materials or transport). For the purpose of this clause, the cost of material shall be construed as including any duty of tax by whomsoever payable which is payable under or by virtue of any law (British or foreign) on the import purchase sale appropriate processing or use of such material.

22. Risk. Unless otherwise agreed in writing risk of damage to or loss (including loss or damage caused by the Seller's negligence) of the Goods shall pass to the Buyer:

(a) in the case of Goods to be delivered at the Seller's premises, at the time when the Goods are delivered; or (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery, or (c) if the Buyer wrongfully fails to take delivery of the Goods as provided in Condition 13 (Delivery), the time when the Goods are deemed delivered under Condition 13 (Delivery).

23. Title. Notwithstanding delivery (or deemed delivery) and the passing of risk in the Goods (1) the ownership of the Goods (legal and beneficial ownership) or of any item comprised in the Goods, shall remain with the Seller until full payment of the Contract price (including any interest due) has been made in full and in cleared funds. If such payment is overdue in whole or in part, the Seller may (without prejudice to any of its other rights) require the Buyer to deliver up the Goods, and if the Buyer fails to do so forthwith recover or re-sell the Goods or any of them and may enter upon the Buyer's premises by the servants or agents for that purpose. Until such time as legal and beneficial ownership in the Goods passes to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as the Seller's bailee, shall store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property, shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods, and keep the Goods insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and on request shall provide the policy of insurance to the Seller, and in good repair until payment of the Contract price in full in cleared funds has been made. Payment of the Contract price in full shall become due immediately upon the occurrence of any of the events referred to in Condition 17 hereof (Determination of the Contract). (2) If, before

full payment has been made, the Goods or any part of them have become the constituents of or converted into other products, the Seller shall have the ownership of and title to such other products as if they were the Goods. If the Goods or any part of them are sold by the Buyer whilst any sums are due as aforesaid whether in their original form or as constituents of or converted into other products in such manner as to pass to a third party a valid title to the Goods the Seller's rights shall attach to the proceeds of such sale(s) or to the claim for such proceeds and the Buyer shall hold such proceeds on trust for the Seller as bailee and shall place such proceeds in a separate account and for the purposes of each and every such sub-sale the Buyer shall be constituted the Seller's agent. (3) The Buyer's right to possession of the Goods shall terminate immediately if : (a) the Buyer 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 and/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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the

Buyer; or (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or (c) the Buyer encumbers or in any way charges any of the Goods; (d) the Seller has reasonable grounds for suspecting that the Buyer may suffer any of the events or circumstances set out in Condition 23(3) (a), (b) or (c); or (e) the Buyer suffers or permits to suffer any similar or equivalent process to any of the provisions in this Condition 23(3) in any foreign jurisdiction. (4) The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller. (5) The Buyer grants the Seller, 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 Buyer's right to possession has terminated, to recover them. (6) Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer. (7) On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 23 shall remain in effect.

24. Arbitration and law. (1) Any dispute arising under or in connection with the Contract shall at the sole discretion of the Seller be referred to arbitration by a single arbitrator to be appointed by agreement of the parties or, in default of agreement, by the President of the Law Society of England and Wales for the time being. The arbitration shall be in

accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. (2) These Conditions and the Contract shall be governed by and in accordance with the laws of England and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.

25. General.

(1) No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

(2) The Buyer shall not without the consent in writing of the Seller assign the whole or any part of the Contract.

(3) The headings are inserted for convenience only and shall not affect the construction of these Conditions.

(4) 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.

Vacuumatic Limited 2009

