

Standard Terms & Conditions of Sale of Horsemat Limited (hereinafter called the Company)

1. General

All orders accepted and tenders made by the Company are made and accepted upon the following terms and conditions. Any order given to the Company, or acceptance of the Company's tender, shall be deemed to constitute an agreement to be bound by such terms and conditions.

The terms and conditions herein contained shall govern all contracts entered into by the Company for the supply of goods and in the absence of express agreement to the contrary any condition, warranty or other term which the purchaser may seek to impose shall not apply to the Company in so far as it is contrary to or inconsistent with these terms and conditions. In particular, but without prejudice to the generality of the foregoing, the Company will not be bound by any terms that seek to exclude these terms and conditions or any of them.

The purchaser of any product supplied by the Company shall be deemed to have inspected and approved the goods on delivery, and to have read and approved the terms and conditions of sale.

The company will not knowingly supply any product for use in, or on, any type of aeroplane or flying vehicle. It is the responsibility of the purchaser to notify the Company if they wish to use any product in flight, and it will be deemed if the Company has not been informed in writing, to the contrary, that any products supplied to any purchaser operating in the Aerospace industry, will be used in ground rig equipment.

2. Offers and Contracts

Quotations issued by the Company are not offers capable of acceptance so as to create a binding contract. No contract shall come into existence by which the Company shall be bound before the purchaser has submitted an order and the Company has thereafter accepted that order in writing.

3. Drawings and Specifications

All the information contained in any specification, drawing and catalogue (or which accompanies or forms part of any quotation made by the Company) is subject to alteration at any time without prior notice and the Company will not be bound to comply therewith. The Company shall not be liable for any inaccuracies in any drawing, specifications or other information supplied to the purchaser and the Company shall not be liable for any result whatsoever arising from any inaccuracy howsoever caused. All drawings are and shall remain the property of the Company and must not be copied, reproduced or divulged either directly or indirectly to any other person without the prior permission of the Company.

4. Orders

Verbal, telephoned or telegraphic orders and any variations to orders must be confirmed in writing by the purchaser, otherwise the Company will not, unless it so thereafter agrees in writing, be bound to comply with same.

5. Confirming Merchant Houses

Orders from Confirming and Merchant Houses are only accepted on the basis that they place the order with the Company as Principals and not Agents for an Overseas customer although the Company must be advised of the market concerned and the identity of the ultimate customer. The Company will consign goods to the carrying vessel and goods may not be consigned to any territory, company or individual without the Company's prior written authority.

6. Clerical Errors

The Company will not be bound by any clerical or arithmetical errors occurring in any quotation/notice of acceptance, invoice or statement of account or document issued by it.

7. Quantity Tolerances

The Company reserves the right to supply and charged for 10% by number more or less of the goods than the quantity ordered. When such supply has been effected the order shall be accepted by all parties as having been completed.

8. Prices

In the case of the award of a Wage Tribunal after the acceptance of the order or in the event of the present prices of any material being increased, the Company reserves the right without giving prior notice to the purchaser to increase the contract price to cover such increased labour and material costs as are ruling at date of delivery. The purchaser shall pay where applicable, any taxes, licence fees, customs, import and export duties and charges. Unless otherwise specified all prices are net and ex-works.

9. Despatch

The period of time quoted by the Company for despatch of goods ordered is to be calculated from the date when the Company accepts the purchasers' order, or when the Company has received all the information necessary for it to carry out the order and to despatched the goods, whichever is later.

The Company will not be responsible or accountable for any delay in despatch occasioned by any cause outside its control, but shall be allowed a corresponding extension of time in respect of such delay. In particular, but without prejudice to the generality of the foregoing, the Company will not be responsible or accountable for any delay occasioned by strike, lock-out, war, fog, fire, ice, accident (wherever any of the said causes shall occur), defective materials supplied by others, or failure on the part of any supplier to make delivery to the Company.

Should the Company be prevented from supplying in full any goods especially manufactured by reason of any of the said causes, the purchaser shall take such goods as the Company is able to despatch and shall pay for the same pro rata at the agreed prices. The Company shall have the right to despatch any portion of the goods sold or agreed to be sold separately and to invoice the purchaser and to receive payment therefore and on the same terms and conditions as are herein set forth for the whole Contract. Promises of delivery are given in good faith and every effort will be made to keep to despatch dates given, but no liability can be accepted by the Company for any loss caused through failure to deliver, or delay.

10. Terms of Payment

Goods for Home Market:

Payment of any goods despatched by the Company shall be made at the net invoice price without deduction of any discount 30 days after the end of the month of invoice unless otherwise specifically agreed in writing. The Company holds the right to add discretionary interest charges (generally 5% over bank base rate) on a per month basis for debts not cleared within the agreed payment terms.

Goods for Export Market:

Unless otherwise agreed payment for all goods despatched shall be net cash sterling in exchange for documents of title.

11. Non-Payment

Goods shall remain the property of the Company until the whole contract price has been paid and accordingly the Company shall be entitled to recover the goods if payment has not been made by the due date. Should the goods become constituents of or become converted into other products whilst subject to the Company's equitable and beneficial ownership, the Company shall have an equitable and beneficial ownership in such other products as if they were solely and simply the goods previously supplied by the Company. After delivery the purchaser shall be responsible for and shall indemnify the Company against loss or damage to the goods from whatsoever cause occurring. The purchaser agrees to store such goods and products in such a way that they are readily identifiable as the property of the Company. In the circumstances defined in this condition, the Company shall be entitled immediately after giving notice of its intention to repossess, to enter upon the premises of the purchaser with such transport as may be necessary and repossess any goods sold hereunder to refuse or delay payment therefore, unless otherwise agreed. The Company reserves to itself the right to pursue all other remedies available by law notwithstanding the generality of the foregoing.

12. Property of Tools

The Company shall retain the property in all tools used in the manufacture of any of the Company's products unless such tools have been supplied at the sole cost of the purchaser in which case the property in such tools shall be vested in the purchaser, it shall agree to leave any such tools in the permanent possession of the Company which will have the exclusive rights to use any such tools in any manufacturing process. The purchaser shall not permit any third party to use any tools the property of which is vested in it whatsoever, nor shall it disclose to any third party any measurements, dimensional or design details or any other information whatsoever in respect of any such tools at any time. In the event of it becoming necessary to replace any tools the property of which is vested in the purchaser this shall be undertaken by the Company, which shall have the right to charge the full cost of such replacement tools to the purchaser.

13. Free Issue Parts

Where parts or components are supplied to the Company as a free issue by or on behalf of the purchaser for incorporation by the Company by bonding or otherwise in parts to be manufactured by the Company, such free issue parts or components are supplied at the purchaser's risk. Whilst reasonable care will be taken to avoid damaging free issue parts in the Company's possession the Company cannot accept any liability for such damage nor accept any liability for any costs or damage attributable to defects in free issue components. Free issue parts supplied by the purchaser will not be inspected by the Company and are deemed to have been inspected and passed by the purchaser. The Company cannot be held responsible for delays in deliveries arising from delays in the provision of free issue parts or delays arising out of the necessity for replacing or rectifying incorrect or defective free issue parts.

14. Substitutions

- (a) should any materials or parts specified or required for completion of a contract hereunder be unavailable for the timely satisfaction of the order, a substitute, deemed by the Company to be suitable for the intended purpose, as understood by the Company, will be supplied if available and shall be accepted by the purchaser in full satisfaction and performance by the Company's obligation in that particular.
- (b) In the event that the Company is unable to obtain a substitute which the Company deems suitable for unavailable materials or parts, the Company's obligation to complete performance shall, upon notification posted to the purchaser, be suspended until such times as the materials previously unavailable for substitutes therefor as provided for above, become available, and any necessary adjustment to the price shall be made by the Company.

15. Sub-Contracting

The Company shall be entitled to sub-contract the whole or part of any work at its absolute discretion, and if it does so, shall be deemed to have carried out its obligations under the contract.

16. Industrial Property

The Company does not warrant that the supply or use of the goods in the United Kingdom or elsewhere is not an infringement of the patent, trademark, registered design or other industrial rights of third parties.

17. Defects

The Company takes every care with regard to the quality and standard of manufacture of its goods, but as they are used for a multiplicity of purposes and the Company has no control over the method of their application or use, the Company will not be bound by any conditions or warranties express or implied or otherwise as to the fitness of its goods for any particular purpose. Any technical co-operation between the Company and the customer is given for the customer's assistance and shall not affect these conditions.

18. Storage

The company reserves the right to put the goods or any portion thereof into storage at the purchaser's risk and expense in the following cases, or any other comparable circumstances:

- (i) where the goods are about to be despatched and the purchaser notifies the Company that the purchaser is or will be unable to receive or provide suitable space for the goods, or for any other reason will be unable to accept delivery when tendered;
- (ii) where the Company is ready to despatch the goods but needs delivery instructions and such instructions have not been provided by the purchaser;
- (iii) in an ex-works contract where the purchaser fails to collect the goods when ready

19. Damage or Loss in Transit

The risk of loss or damage to the goods howsoever caused shall pass to the purchaser on delivery of the goods to the purchaser, or to a carrier for consignment to the purchaser, or on the expiry of the date notified to the purchaser that the goods are ready for despatch, whenever shall be the earliest.

20. Claims

All claims for loss or damage to goods in transit must be submitted in writing both to the Company and to the Carrier as follows:

- (a) in the case of non-delivery of the whole of any consignment or of any separate package forming part of a consignment **within seven days** of receipt by the purchaser of the invoice or advice note (whichever is the earlier) in the case of deliveries to be made in the United Kingdom and **within twenty-one days** of receipt by the purchaser of the invoice or advice note (whichever is the earlier) in the case of deliveries to be made outside the United Kingdom; and
- (b) in the case of damage to or partial loss of the goods, **within three days** of delivery in the case of United Kingdom deliveries and **with seven days** of delivery in the case of deliveries outside the United Kingdom.

The absence of any such claim shall be conclusive evidence that the goods have been delivered in accordance with the contract.

21. Insurance

Where goods are insured by the Company voluntarily or at the purchaser's request, a charge will be made on the invoice, but the Company is under no liability to take proceedings for the recovery of the loss or damage and is to be liable only for the amount received by the Company under such insurance, less expenses.

22. Cancellation

If the purchaser fails to make punctual payment or commits any breach of these terms and conditions or being a body corporate has a receiver appointed or passes a resolution for winding up (other than the purposes of amalgamation or reconstruction) or a Court makes an order to that effect or being an individual has a receiving order made against him or enters into any composition or arrangement with his creditors the Company may suspend any outstanding deliveries or cancel this contract so far as it remains unperformed at its option and without prejudice to the Company's other rights and remedies including without limitation its rights to claim for the price of the goods already delivered at the date of cancellation and for loss or injury occasioned thereby.

23. Indemnity

The purchaser shall indemnify and keep the Company indemnified against all costs, claims, damage or expense (whether in relation to persons or property) caused by or resulting from any breach or non-performance of the contract negligence on the part of the purchaser its servants or agents.

24. Non-Assignability

The contract is between the Company and the purchaser as principals and is not assignable without the consent in writing of the Company.

25. Guarantee

Subject to the conditions hereinafter contained the Company guarantees all its products for the period of six months from the date of despatch or collection against any defect attributable to faulty materials or workmanship. Should any defect as aforesaid develop within the said period the Company will repair or (at its option) replace the defective product or the defective part at the Company's factory without charge provided that:

- (a) The product has not been subjected to abnormal use, or to use under abnormal conditions, or beyond its capacity as rated and recommended by the Company and
- (b) The purchaser shall report the assumed fault and cause, or the symptoms, and shall quote the serial number if any of the product together with the date of purchase.
- (c) Should the defective product or defective part have been improved in design through development since the date of despatch, the Company may, at its option, supply the new product or part.
- (d) The purchaser shall at its own expense return the defective product or part to the Company's factory and shall meet all other incidental expenses however incurred and the purchaser must pack the product adequately and despatch it at carriers risk rates, suitably cleaned and in hygienic state.
- (e) The decision of the Company is final as to whether or not a defect is due to faulty workmanship or material.
- (f) If in the opinion of the Company the product is found to be satisfactory in operation or defective as a result of accident, neglect, alteration, misuse or wear and tear, the Company may at its discretion make a charge for examination and the cost of return carriage shall be borne by the purchaser. In such a case the Company will submit to the purchaser a quotation for the replacement of the product before affecting such a replacement.
- (g) The above guarantee shall not in any case extend to any products not of the Company's manufacture but the Company will use its best endeavours to pass on to the purchasers the benefit (with corresponding liabilities) of any guarantee received by the Company from the supplier of any such goods, but not so as to impose upon the Company a greater liability than would be imposed by its own guarantee herein contained and provided the Company is not put to any legal expense in connection therewith.
- (h) The Company shall not be liable for any costs of stripping out, refitting, assembling any equipment into which any of the Company's products may be fitted, and any such costs, if incurred, shall be paid by the purchaser.
- (i) The Company shall not be liable for any damage, loss, injury or expense of any sort or kind caused directly or indirectly to any person or property by any goods sold or delivered by the Company or arising from the use thereof and liability whether at common law, or otherwise and whether arising from any conditions, statement or warranty (express or implied) is expressly excluded.

26. Packing

Unless otherwise specified in any order or tender of the Company all packing cases, skids, drums and other packing materials will be charged for and are not returnable to the Company.

27. Concurrent Remedies

No right or remedy conferred upon or reserved to the Company shall exclude any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder now or hereafter existing and may be enforced concurrently therewith or from time to time.

28. Arbitration

Any dispute arising hereout including disputes as to the existence or validity of a contract between the parties (other than disputes to be referred to an expert) shall be referred to an arbitrator to be appointed by the parties jointly, or in the event of their failing to agree, to an arbitrator appointed by the President for the time being of the Law Society of England on the application of either party for such appointment and in such case the following provisions shall apply to such arbitration:

- (i) arbitration shall take place in London;
- (ii) the arbitrator shall apply the law of England;
- (iii) the procedure shall be that provided by the Arbitration Act 1950 or any subsequent amendments thereof and such further items of procedure as shall be settled by the arbitrator on the application of either party or such arbitrator.

29. Legal Construction

These conditions, and every contract in which they are incorporated shall be governed by and construed according to the Law of England and subject to clause 28 the purchaser agrees to submit to the jurisdiction of the English Courts.