

Vehicle Weighing Solutions Ltd

Standard Terms of Business with Body Builder

1 Terms of Business

- 1.1 These terms of business ("**Terms**") together with any completed Vehicle Weighing Solutions order acknowledgement form ("**Order**") and warranty terms specific to the Goods ("**Warranty**") are the sole defining documents governing the provision of the Goods & Services by Vehicle Weighing Solutions Ltd ("**VWS**") to the buyer named in the Order ("**Buyer**").
- 1.2 The Terms supersede any purchase order issued by the Buyer and all proposals, terms & conditions, statements, representations or warranties made by or between VWS and the Buyer ("**Parties**") relating to the Goods & Services. No variation is valid unless agreed in writing by the Parties.

2 Orders & Specification

- 2.1 Full details of the Goods & Services (including the quality, quantity, description & specification), the 3rd party who will operate the Goods ("**End User**"), and the timetable & method of delivery will be detailed in the Order which will form part of the contract between the Parties.
- 2.2 No order for Goods & Services submitted by the Buyer shall be deemed accepted by VWS unless confirmed by a signed Order. The Buyer shall ensure the accuracy of any Order, including any applicable specification, and notify VWS in writing of any errors.
- 2.3 If the Goods are to be manufactured, or any process is to be applied to the Goods by VWS in accordance with a specification, drawing or design submitted by the Buyer or End User ("**Buyer Specification**"):
 - a) the Buyer shall fully indemnify VWS against all losses, damages, costs and expenses including legal costs on an indemnity basis ("**Losses**") awarded against or incurred by VWS in connection with a claim for breach of the intellectual property rights of any other person which results from VWS's use of the Buyer Specification.
 - b) VWS reserves the right to make any changes to the Buyer Specification necessary to ensure compliance with any statutory or EU requirement applicable to the Goods so long as the changes do not materially affect quality or performance or infringe 3rd party IPR.
- 2.4 The Buyer will at its own expense provide, & procure that the End User provides, all such information & co-operation as is reasonably required to enable VWS to provide the Goods & Services under these Terms.

3 Fees & Payment Terms

- 3.1 The Charges payable for the Goods & Services will be detailed in the Order, including any packaging and delivery charges.
- 3.2 VWS reserves the right to increase the Charges by serving written notice on the Buyer:
 - a) at any time before an Order is signed, to reflect increases in costs which are beyond the control of VWS including significant increases in the cost of labour or materials;
 - b) to cover any costs incurred as a result of the failure of the Buyer or End User to provide all necessary information and instructions at the appropriate time.
- 3.3 Unless otherwise stated in the Order, all Charges are stated on an ex-works basis, and the Buyer shall be liable to pay all packaging, delivery & insurance charges unless VWS agrees to make the Goods available for collection at VWS's premises.
- 3.4 The cost of pallets and returnable containers will be charged to the Buyer, but full credit will be given to the Buyer if these are returned undamaged to VWS before the invoice payment date.
- 3.5 The Charges are exclusive of any VAT payable in respect of the Goods & Services, and this shall be added to the invoice at the applicable rate unless it is agreed that these are zero rated.

- 3.6 Invoices will be submitted to the Buyer as detailed in the Order unless the Buyer fails to collect the Goods, or fails to accept delivery of the Goods, on the due date specified in the Order. In these circumstances, the invoice will be submitted on the scheduled delivery or collection date.
- 3.7 All Charges are to be paid in full (without any deduction or set-off) within 30 days of submission of invoice. Time shall be of the essence with regard to these payment terms & interest may be charged on any outstanding Charges from the due date for payment until the date cleared payment is received at the statutory rate from time to time.

4 Delivery, Ownership & Risk

- 4.1 Delivery of the Goods shall be made to the Buyer's address detailed in the Order unless the Buyer requests permission to collect the Goods from VWS.
- 4.2 The delivery date stated in the Order shall be a good faith estimate only and VWS shall not be liable for any delay in delivery of the Goods howsoever caused. Goods may be delivered in instalments or in advance of the estimated delivery date.
- 4.3 Where the Buyer fails to accept delivery, or collect the Goods on the due date, VWS shall be entitled to:
- a) Store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage, including insurance, or
 - b) Sell the Goods at the best price readily obtainable and (after deducting all reasonable expenses) account to the Buyer for the excess over any Charges already paid to VWS in respect of these Goods or charge the Buyer for any shortfall below the Charges paid.
- 4.4 Risk of damage to or the loss of the Goods shall pass to the Buyer:
- a) In the case of Goods being delivered to the Buyer's premises, at the time of delivery or if the Buyer fails to take delivery of the Goods, the time that VWS attempted to deliver the Goods.
 - b) In the case of Goods being collected from VWS's premises, at the time when VWS notified the Buyer that the Goods were available for collection.
- 4.5 VWS retains ownership of the Goods delivered to, or collected by, the Buyer as against the Buyer and any sub buyer such as the End User until the Charges in respect of the Goods are paid in full.
- 4.6 Until such time as title to the Goods passes:
- a) the Buyer shall hold the Goods as bailee, identify the Goods as the property of VWS and (unless affixed to a vehicle) ensure they are stored by the End User separately from those any 3rd party.
 - b) the Goods may be dealt with in the ordinary course of the Buyer's business, but the proceeds of sale or other disposition or use (apportioned if necessary) are to be held to VWS's account.
 - c) VWS shall be entitled to request the return of the Goods, and in default, repossess the Goods from the End User at any time.
- 4.7 Each party shall maintain insurance adequate to provide cover in accordance with sound business practice in connection with its obligations under this Agreement.

5 Cancellation & Suspension of Order

- 5.1 Under no circumstances can Goods manufactured to the Buyer Specification be cancelled by the Buyer. Any other Order may be cancelled or suspended only with the written agreement of VWS, and the Buyer shall indemnify VWS in respect of all losses & costs incurred as a consequence, including the cost of materials & labour used and/or ordered, and loss of profit on the Order.
- 5.2 VWS may by serving written notice on the Buyer cancel the contract, suspend further deliveries, and/or require immediate payment of all Charges due for Goods delivered or collected if:
- a) the Buyer stops or threatens to stop trading;

- b) a receiver, administrator or similar officer is appointed over any of the Buyer's assets or business;
- c) the Buyer makes an arrangement for the benefit of its creditors;
- d) the Buyer goes into liquidation except for the purposes of a solvent amalgamation or reconstruction;
- e) anything similar to the events specified in clauses (a) to (d) happens under the national, state or local laws of any other country.

6 Warranties & Representations regarding the Goods & Services

- 6.1 Subject to Clause 7.3 and the terms of the **Warranty**, VWS warrants to the Buyer and End User that:
- a) the Goods manufactured by VWS will correspond with their specification at the time of delivery and will be free from defects in workmanship & materials for a period of 12 months from delivery;
 - b) the Services will be performed with due care and skill
as more specifically detailed in the Warranty.
- 6.2 Except as set out in Clause 6.1, all warranties, terms & conditions, whether oral or written, express or implied by statute or otherwise which might have imposed obligations on VWS will be excluded to the fullest extent permitted by law.
- 6.3 VWS's employees and agents are not authorised to make any representations & warranties, and should any be made these shall be invalid unless confirmed in writing and signed by a Director of VWS.

7 Liabilities

- 7.1 Notwithstanding anything to the contrary in these Terms, the liability of VWS under or in connection with these Terms, whether arising from contract, negligence or howsoever will be limited as per this Clause.
- 7.2 The liability of VWS is unlimited in respect of any liability arising from:
- a) Death or personal injury caused by the negligence of VWS;
 - b) any proven fraud on the part of VWS.
- 7.3 VWS shall not be liable in respect of any defect in the Goods;
- a) arising from any Buyer Specification;
 - b) arising from breach of Warranty, fair wear & tear, wilful damage, negligence, abnormal working conditions, failure to follow VWS's instructions (whether oral or in writing), misuse or alteration or repair of the Goods by anyone without VWS's approval;
 - c) not manufactured by VWS. In respect of such Goods, the Buyer shall only be entitled to the benefit of any warranty or guarantee provided by the manufacturer of those Goods;
 - d) where the Buyer has not paid the Charges for the Goods in full by the due date for payment.
- 7.4 The Buyer shall, and shall procure that the End User shall, notify VWS of any claim based on a defect in the Goods, including a failure to meet their specification, within 5 working days from the date of delivery unless the defect was not apparent on reasonable inspection (where notification must be given as soon as reasonably possible). If delivery is not refused by the Buyer, and/or the Buyer or End User fail to give such notification, VWS shall not be liable for such defect and the Buyer shall be obliged to pay the full Charges in respect of the Goods.
- 7.5 Where a defect is notified to VWS in accordance with Clause 7.4, VWS shall be entitled to replace the Goods (or the part in question) free of charge, or at VWS's sole discretion, refund the Buyer the price of the Goods (or a proportionate part thereof). VWS shall have no further liability to the Buyer in respect of such defect.
- 7.6 The aggregate total liability of VWS is limited to £ 5,000,000 in respect of any claim for loss of, or physical damage to, the Buyer's tangible property caused by the act or omission of VWS.

- 7.7 In respect of any other liability not otherwise covered by this Clause 7, VWS's aggregate total liability is limited to the greater of the Charges paid in respect of the Goods or Services which gave rise to the claim and £5,000,000.
- 7.8 VWS will not be liable for any special, consequential or indirect damages, loss of profits (including direct loss of profits), loss of business, loss of revenue, loss of goodwill or loss of anticipated savings arising out of or in connection with the Terms.
- 7.9 The Buyer accepts that the Charges have been set in relation to the risks being assumed by VWS under the Terms, and that accordingly the limitations on the liability of VWS detailed in this Clause are reasonable.

8 General

- 8.1 Except for any payment obligation imposed on the Buyer, neither party will be liable for a delay in performing, or for a failure to perform, obligations if that delay or failure is caused by circumstances beyond the reasonable control of that party including (without limitation) difficulties in obtaining labour, fuel or parts, or any power failure or machinery breakdowns. Failure to procure the compliance of the End User shall not be deemed circumstances beyond the reasonable control of the Buyer.
- 8.2 Subject to Clauses 6 & 7, a person who is not a party to the Terms has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms. This does not affect any right or remedy of a third party that exists, or is available, apart from that Act.
- 8.3 The laws of England will govern the Terms, and the Parties submit to the exclusive jurisdiction of the English courts.