

**UNATRAC LTD  
TERMS OF TRADING  
STANDARD TERMS AND CONDITIONS**

**1. DEFINITIONS**

In these terms and conditions (the "Terms") the "Company" shall be a reference to Unatrac Ltd, a company registered in England with company number 03428184 whose registered office is 100 New Bridge Street, London, EC4V 6JA; "Contract" shall be a reference to a contract for the sale and purchase of Products between the Company and the Customer formed by the Company's acceptance of an Order in accordance with Clause 4; "Customer" shall be a reference to the purchaser of any Product from the Company; "Order" shall be a reference to an order placed by the Customer for the supply of Products; and "Product(s)" shall be a reference to any item(s) supplied by the Company to the Customer and shall include without limitation, New Products and Used Products; "New Products" shall be a reference to Products in new condition manufactured by a third party; and "Used Products" shall be a reference to second hand Products.

**2. APPLICATION OF CONDITIONS**

- (a) The placing by the Customer of an Order under and in accordance with these Terms, and acceptance thereof by the Company in accordance with Clause 4(a) shall create a Contract, subject to these Terms.
- (b) Subject to Clauses 4(a) and 21, any Contract for the supply of Products shall be on these Terms to the exclusion of any other terms and conditions, including any terms and conditions which the Customer purports to apply under any purchase order, confirmation order or other document. The terms contained in any such document sent to the Company shall have no effect.

**3. QUOTATIONS**

Any quotation made by the Company shall constitute an invitation to treat and not an offer. The Company may withdraw or amend any quotation at any time. The Company will endeavour to hold the terms of any quotation given by it for a period of 30 days or for such other period as is specified in writing; but shall have no obligation or liability to do so.

**4. FORMATION OF CONTRACT**

- (a) The Company may, at its discretion, decline any Order placed by the Customer. No Contract shall come into existence until the Customer's Order has been accepted in writing by the Company, or until Products described in an Order have been dispatched to the Customer, whichever event occurs sooner.
- (b) Any Order must be accompanied by sufficient information to enable the Company to proceed with the Order forthwith and thereafter any modification shall be subject to prior agreement by the Company in writing. All verbal Orders and amendments to Orders must be confirmed by the Customer in writing. An Order shall contain an order number, a date, the Company's Quotation reference, and a description of the Products and their respective reference numbers.

**5. PRICES**

The prices for Products shall be as set out in Orders' accepted by the Company in accordance with Clause 4(a), provided that such prices may be subject to alteration by the Company from time to time without prior notice to reflect any increase in cost to the Company of supplying such Products to the Customer. All sums payable under these Terms or any Contract are exclusive of Value Added Tax (if and to the extent payable). Any Value Added Tax, sales taxes, or any other applicable taxes or duties, whether government, local or otherwise, which the Company may be required to pay or collect shall be added to the sale price and paid by the Customer unless a valid exemption certificate is furnished.

## **6. CURRENCY**

All prices and payments hereunder shall be in US Dollars, unless otherwise agreed in a Contract.

## **7. PAYMENT**

- (a) The Company offers a variety of payment terms. Specific terms may be agreed with the Customer during negotiations and will be confirmed in writing. Provided that if no such terms are agreed, invoices from the Company shall be due for payment prior to release of the Products. Payments hereunder shall be made by direct bank transfer to Company's nominated bank account or by such other means as may be agreed between the parties in a Contract.
- (b) In the event of the Customer failing to effect full payment by the due date, the Company shall be entitled, without prejudice to any other rights available to it, to be paid interest on any outstanding balance at an annual rate of 8% above Barclays Bank PLC base lending rate from time to time in force, calculated on a weekly basis, and to discontinue forthwith the supply of any further Products or services whether forming part of these Terms or any other contract. In such circumstances the Company shall be under no liability in respect of, or arising out of, or in connection with such discontinuance, and the Customer shall be liable to the Company for any costs, claims, damages or loss suffered by the Company by reason of, or in connection with such failure to pay by the Customer.
- (c) All sums payable for the Products shall be payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.

## **8. DISPATCH / DELIVERY**

- (a) Any time or date given by the Company in respect of dispatch delivery shall be deemed an estimate only, and the Company shall not be liable for any loss or damage suffered by the Customer as a consequence of delays. Any such period for dispatch delivery shall in any event only run from the date of acceptance of the relevant Order in accordance with Clause 4(a).
- (b) Delivery shall take place at the place nominated by the Company, unless otherwise agreed in a contract. Any reference to Incoterms shall be a reference to the most current version of Incoterms at the time of order.
- (c) The Company shall not be liable to the Customer for short shipment claims, unless notification of such claims are received by the Company in writing within the earlier of 7 days of delivery of the relevant Products in accordance with Clause 8(b) or 21 days of arrival of the delivering vessel/aircraft at a destination port. The customer shall remain liable to the Company for the full purchase price of the Products until such time as the Company has notified the Customer of its acceptance of such short shipment claim. The Company reserves the right to reject short shipment claims at its own discretion.

## **9. RETENTION OF TITLE AND PASSING OF RISK**

- (a) Unless otherwise agreed by the Company in writing, risk of loss or damage to the Products shall pass to the Customer on delivery of the Products in accordance with Clause 8(b).
- (b) Notwithstanding delivery and the passing of risk in any Products, the Products shall remain the sole and absolute property of the Company as legal and equitable owner until the Company has received in full (in cash or cleared funds) all sums due to it under these Terms.
- (c) The Customer acknowledges that it is in possession of Products solely as bailee for the Company until such time as the Company has received in full (in cash or cleared funds) all sums due to it under these Terms.
- (d) The Company reserves the immediate right of repossession of any Products to which the Company has retained title hereunder which shall be exercisable at any time after delivery of the Products.

- (e) For the purpose of exercising its rights under Clause 9(d), the Customer hereby grants, and shall procure that any third party which holds such Products shall grant, an irrevocable right and licence to the Company's employees, agents and contractors, to enter upon all or any premises where Products are stored without notice.
- (f) Until such time as all sums owing to the Company under these Terms have been received by the Company (in cash or in cleared funds), the Customer shall be liable for and shall indemnify the Company against all loss or damage to the Products following delivery in accordance with Clause 8(b) from whatever cause.
- (g) Following delivery of the Product, but prior to full payment being made in respect of such Products, the Customer shall be entitled to process Products in such fashion as the Customer may wish and or incorporate them in, or with, any other goods, provided that such action does not adversely affect the Company's right to repossess such Products in accordance with Clause 9(d), and that such action does not affect title to the product.
- (h) If by reason of instructions or lack of instructions from the Customer or any other act or omission of the Customer, the dispatch of the Products in accordance with these Terms is delayed, risk of loss or damage to the Products shall pass to the Customer at the time such delivery was to have taken place. The Customer shall be liable to pay all costs incurred by the Company, including but not limited to storage charges, which arise as a result of the delay. The Customer shall further be liable to meet its payment obligations under these Terms notwithstanding any delay in delivery of the Products.

#### **10. SPECIFICATIONS**

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars and weights and dimensions submitted by the Company with a quotation are approximate only and none of these shall form part of any Contract. In any event, figures for performance of the Product vary according to the nature of the site upon which the Product is being used, and the circumstances of use.

#### **11. CANCELLATION OF ORDERS AND CONTRACTS**

The parties may from time to time agree cancellation charges which shall be payable upon the cancellation of a Contract (or any part thereof). In the event of the Customer wishing to cancel an Order or Contract (or a part thereof), it shall give the Company written notice of such proposed cancellation. Unless otherwise agreed in writing, the Company may at its sole discretion accept or reject the request from the Customer to cancel an Order or Contract. In the event of a request to cancel being accepted by the Company, the Company reserves the right to apply a cancellation charge (if applicable), and upon the Customer's acceptance of the cancellation charge (if applicable) the Company would then confirm in writing the cancellation of the Order or Contract, and any and all terms and charges which, unless otherwise agreed in a Contract, shall be payable by the Customer within thirty (30) days of receipt of the Company's invoice.

#### **12. WARRANTY**

- (a) The Company guarantees that in the event of a defect occurring in any New Products supplied by it, the Company will arrange for an inspection to be carried out where the Company, at its sole discretion, considers such inspection to be necessary.
- (b) The Company undertakes to use reasonable endeavours to procure the assignment to the Customer of any manufacturer's standard warranty terms (to the extent that such terms exist and are assignable to the Customer) in respect of New Products.

- (c) The Customer acknowledges that all Used Products are supplied by the Company on an “as is” basis without warranty, and that such sales of such Used Products are based on the condition of the Products at the time of sale. The Customer shall inspect all Used Products prior to their purchase and shall rely solely upon its own assessment of the Used Product’s condition, quality, fitness for any purpose and compliance with statutory requirements.
- (d) The Company’s obligations in sub-clauses (a) and (b) above are subject to the following:
  - (i) The Customer giving the Company immediate written notification on discovery of the alleged defect and full details thereof; and
  - (ii) the Product being defective by reason of faulty workmanship or the use of defective materials, and
  - (iii) the Customer returning such Products (or any part thereof) to the Company’s nominated delivery address if so required by the Company. The Customer is responsible for all costs associated with the transportation of such Products. Such returned Products shall be adequately packed for carriage and shall be clearly marked for identification with the name and address of the Customer; and
  - (iv) the Customer having properly maintained and operated such Products and complied with all service requirements, manuals and recommendations of the Company or the manufacturer (where applicable).
- (e) For the avoidance of doubt, the Company shall not be liable in respect of any defect arising out of or in connection with misuse, neglect, lack of adequate daily operating maintenance, wilful or accidental damage, or normal wear and tear, as determined by the Company at its sole discretion. Where any inspection is carried out in accordance with sub-clause (a) hereof or where any Product or part thereof is returned to the Company but the Company at its sole discretion determines that it or the manufacturer is not responsible for any repair or replacement, the Company will be entitled to charge for such inspection work and will notify the Customer in writing accordingly after the expiry of thirty (30) days from the date of the letter of notification, and the Company may at its sole option either return the part or Product to the Customer, or dispose of it and utilise the proceeds of sale in extinction of any debt then due to the Company from the Customer.
- (f) The Company’s warranty obligations hereunder shall exclude all consumable items, including but not limited to oil, grease, fuel and filters, which will be provided by the customer or purchased by the Customer at the Company’s then current selling price.
- (g) Except as otherwise agreed in writing by the Company, all work in respect of the Company’s obligations under this Clause and in respect of any commissioning, installation, repair, maintenance, inspection or similar work carried out on the Products or in connection with a sale of the Products shall be performed on the basis of the Company’s Standard Terms and Conditions of Servicing from time to time applicable, and all such work shall be performed during the normal working hours of the Company. Where the Customer requires the work to be performed outside the said hours, the Customer will pay any increased labour costs so incurred.
- (h) Defects in either the quality or quantity of any consignment of the Products shall not be a ground for cancellation of the remainder of the Order or of any other Order for the Products.
- (i) The Company accepts responsibility for all technical advice given by its officers or servants for which a specific charge is made (subject to the Company’s Standard Terms and Conditions of Servicing from time to time applicable). Technical advice made available to Customers without charge is given with all reasonable care but without liability on the part of the Company.

- (j) These Terms set out the full extent of the parties' obligations and liabilities arising out of or in connection with the purchase of Products by the Customer and there are no conditions, warranties, representations or terms, express or implied, that are binding on the parties except as specifically stated in these Terms or in any Contract. Any condition or warranty, representation or term which might otherwise be implied or incorporated in these Terms, a Contract, or any collateral contract, whether by statute, common law or otherwise, is hereby expressly excluded.
- (k) Subject to Clause 13 (b) below, the Company's liability in respect of defective Products shall be limited to the liability accepted in sub-clauses (a)-(j) above.

### **13. LIABILITY**

- (a) Subject to Clause 13(b), the Company's maximum aggregate liability to the Consumer in respect of any Contract or any collateral contract, whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed the price payable pursuant to such Contract.
- (b) Nothing in this Clause 13 or otherwise in these Terms or in any Contract shall exclude or in any way limit either party's liability for fraud or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- (c) The Company shall not be liable for any failure in the performance of its obligations under these Terms or any Contract, to the extent that such failure results directly from a failure by the Customer to provide the Company within a reasonable time, any information reasonably requested by the Company for the performance of its obligations hereunder.
- (d) The Company shall in no circumstances be liable under or in connection with these Terms, a Contract, or any collateral contract for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- (e) The Customer shall be liable for and shall indemnify the Company against any and all claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by the Company which arise out of or in connection with, directly or indirectly, the Customer's performance, purported performance or non-performance under these Terms or any Contract including without limitation any losses or expenses arising out of any third party demand, claim or action (including any claim alleging infringement of third party rights) or any misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty of the Customer or its employees, agents or contractors.
- (f) The Customer shall effect and maintain in respect of each Contract insurance in respect of its obligations and liabilities hereunder, including without limitation policies of public liability and product liability. Such policy or policies shall be non-cancellable and not subject to any reduction in policy or policy amount except upon terms reasonably acceptable to the Company. The Customer shall provide written evidence of such coverage to the Company at the Company's request.

### **14. HEALTH AND SAFETY**

If the Customer does not have an operating manual for the Product or requires information on any Product's maximum capabilities, the conditions in which it can be safely operated or any other matter relating to its safe operation, the Customer should contact the Company in order that this documentation and information, to the extent available, can be made available to it.

## **15. PATENTS AND INTELLECTUAL PROPERTY**

- (a) The Company endeavours not to offer for sale Products which infringe rights to patents, trade marks, copyright, registered designs nor any applications to register any of the aforementioned rights or any similar rights ("IP Rights").
- (b) Where the Company provides advice to the Customer in matters of techniques, or supplies Products for carrying a technique into effect, the tendering of such advice or the supply of such Products carries no guarantee that such a technique will avoid the infringement of IP Rights belonging to a third party as a result of the Customer following the advice tendered by the Company or the use of such Products.
- (c) All drawings, catalogues, descriptive and technical specifications, illustrations and other documents published or supplied to the Customer by the Company are subject to copyright and may not be reproduced or disclosed to third parties other than the ultimate user of the relevant Product.
- (d) All IP Rights in and in relation to the Products shall be and remain the sole and exclusive property of the Company (or its licensors).

## **16. CONFIDENTIAL INFORMATION**

- (a) In this Agreement, Confidential Information means information belonging or relating to the Company, its business, business plans, affairs or activities which is confidential to the Company, including without limitation trade secrets, information and data relating to its existing or potential customers, technical and business information relating to its inventions or products, research and development, production, manufacturing and engineering processes, employees or officers, customer lists or requirements, price lists or pricing structures, marketing and sales information, business plans or dealings, financial information or plans, designs, product lines, any document marked "Confidential", or any information which the Customer has been informed is confidential or which it might reasonably expect the Company would regard as confidential, and any proprietary and confidential information of the Company's clients, customers, suppliers or other third parties.
- (b) The Customer acknowledges that, whether by virtue of and in the course of dealings with the Company, it shall receive or otherwise become aware of Confidential Information.
- (c) The Customer undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of these Terms or any Contract or at any time thereafter, without the prior written consent of the Company, directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.
- (d) The Customer undertakes to disclose Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under these Terms or any Contract, and to procure that such officers, employees, agents and contractors are made aware of and observe the confidentiality obligations in this Clause 16.
- (e) The Customer shall immediately upon becoming aware of the same give notice to the Company of any unauthorised disclosure, misuse, theft or other loss of Confidential Information, whether inadvertent or otherwise.
- (f) Upon the earlier of a written request from the Company, or the termination of these Terms or any Contract, the Customer shall return any and all Confidential Information then in its possession or control and will not retain any copies of the same.

- (g) The terms of and obligations imposed by this Clause 16 shall survive the termination of these terms or any Contract but shall not apply to any Confidential Information which:
  - (i) at the time of receipt by the Customer is in the public domain, or subsequently comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;
  - (ii) is lawfully received by the Customer from a third party on an unrestricted basis;
  - (iii) is already known to the Customer before receipt hereunder; or
  - (iv) is independently developed by the Customer or its employees, agents or contractors.
- (h) The Customer may disclose Confidential Information as may be required by law, regulation or order of a competent authority, provided that the Company is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- (i) The existence of these Terms and any Contract are confidential and, save as required by law, regulation or order of a competent authority, may not be disclosed by the Customer to any third party without the Company's prior written consent.

#### **17. SPECIAL EXPORT CONDITIONS**

- (a) All packing cases, crates and other containers are non-returnable except as otherwise stated.
- (b) The Customer shall be responsible for obtaining at its own expense all export and import licences. In the event of these not being granted the Company may forthwith terminate the Contract with immediate effect and shall not be liable for any loss or damage suffered by the Customer arising out of or in connection with such termination. In the event of termination pursuant to this Clause 17(b), the Customer may additionally be liable to pay Cancellation Charges.

#### **18. FORCE MAJEURE**

The Company shall not be liable for any loss or damage suffered as a result of a failure by it to supply the Products where such failure arises by reason of riot, civil commotion, war whether declared or not, accident, shortened hours of labour, strikes, lock-outs, mechanical breakdown of facilities, failures by third parties to supply it with raw materials or goods, storm, flood, fire or any other circumstances, whether of the kind above mentioned or not, which are beyond the control of the Company. The Company shall not, however be relieved from supplying the Products nor the Customer from accepting them when the above causes interfering with delivery shall have ceased. In such circumstances, Clause 5 shall continue to apply.

#### **19. WAIVER AND ASSIGNMENT**

- (a) The failure of the Company to enforce any term or right arising pursuant to these Terms or any Contract does not constitute a waiver of such term or right and shall in no way affect the Company's right to enforce or exercise the term or right.
- (b) The Customer shall not assign, sub-licence, or sub-contract these Terms or any Contract or any of its rights or obligations there under without the Company's prior written consent.

#### **20. TERMINATION**

If the Customer shall commit a breach of these Terms or of any Contract, or if any distress or execution shall be levied upon its property or assets, or if it shall make or offer to make any arrangement or composition with his creditors, or if any resolution or petition to wind up the Customer's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of the Customer shall be appointed, or if the Customer shall commit any act or omission entitling any party to take any of the above or any similar steps in any jurisdiction, the Company shall have the right forthwith to terminate these Terms and/or any Contract (as the case may be) then subsisting with immediate effect upon written notice of such termination being posted to the Customer's last known address, in which case these Terms and/or any Contract shall be deemed to have been terminated

without prejudice to any claim or right the Company may otherwise make or exercise. In addition, the Customer's right to possession of any Products, the title of which has not yet passed shall cease and the Company shall be entitled to repossess the Products in accordance with Clause 9 (d) hereof.

**21. VARIATION**

No variation or waiver of these Terms or any Contracts shall be of any effect unless in writing and signed by an authorised representative of the Company.

**22. ANTI MONEY LAUNDERING**

The Company has in place procedures and controls which are designed to forestall and prevent money laundering. If the Company suspects that a supplier, customer/client, or employee is committing a money laundering or any other offence as set out in the Proceeds of Crime Act 2002, the Customer acknowledges that the Company may, in accordance with its legal responsibilities disclose the suspicion to the National Criminal Intelligence Service.

**23. SEVERABILITY**

If any term of these Terms or any Contract is found to be illegal, invalid or unenforceable under any applicable law, such terms shall, insofar as it is severable from the remaining terms, be deemed omitted from these Terms and/or any Contract, and shall in no way affect the legality, validity or enforceability of the remaining terms.

**24. ENTIRE AGREEMENT**

These Terms together with any Contracts contain all the terms agreed between the parties regarding its subject matter and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to entering into these Terms and any Contracts except as expressly stated in these Terms and any Contracts. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied when entering into an Order or Contract (unless such untrue statement was made fraudulently or was as to a matter fundamental to the other party's ability to perform its obligations) and that party's only remedies shall be for breach of contract as provided in these Terms.

**25. LAW AND JURISDICTION**

The construction, validity and performance of these Terms and any Contract shall be construed according to the laws of England and the parties submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them, provided that the Company shall have the right, as claimant, to initiate proceedings against the Customer in any other court of competent jurisdiction.

**26. GENERAL**

- (a) Clause headings are for convenience only and shall not be used in construing the meaning of the Clauses.
- (b) In the event of any inconsistency between terms set out in an Order and these Terms, the latter shall prevail to the extent of the inconsistency.
- (c) The Company shall be entitled to correct any clerical errors and omission in any Contract relating to the Products.