

Policy: Full Terms and Conditions of Sale
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THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 11

1. Definitions

1.1 "**Buyer**" means the Account Applicant or person who buys or agrees to buy Goods from the Seller.

1.2 "**Conditions**" means the Conditions of Sale set out in this document or varied in accordance with clause 2.5 and any special conditions agreed in writing by the Seller.

1.3 "**Contract**" the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

1.4 "**Goods**" means the goods or any part of them set out in the order.

1.5 "**Order**" the Buyer's order for the Goods or as set out in a purchase order or the Buyer's written acceptance of the Seller's quotation.

1.6 "**Price**" means the price of the Goods.

1.7 "**Seller**" means Stuga Machinery Limited (company registration number 05744259) of Edison Way, Gt Yarmouth, NR31 0NG.

2. Conditions and basis of contract

2.1 The Contract shall be deemed to incorporate these Conditions, to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Buyer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

3. Price

3.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.

3.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

3.3 The Price is exclusive of VAT and charges for packing, postage and delivery (plus VAT), which shall be paid by the Buyer in addition.

3.4 The Seller may request one or more deposit payments and a delivery charge to be paid in advance prior to delivery of the Goods on account of the Price and with the final balance to be paid in full within 28 days of delivery of the Goods to the Buyer.

3.5 In the case of other sales, payment is due in full within 30 days from the date of the Seller's invoice.

3.6 The Seller may agree different credit terms, in its sole discretion, and which will be confirmed in writing to the Buyer.

3.7 Time for payment of the Seller's invoice shall be of the essence of the Contract and any failure to pay shall entitle the Seller at its option to treat the Contract as repudiated by the Buyer or to delay delivery until paid.

3.8 If any act or proceedings shall be commenced in which the Buyer's solvency is concerned, all monies under any transaction covered by these Conditions shall become immediately due and payable.

3.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4. Interest on Overdue Invoices

4.1 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under the Contract, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5. Warranty and Liability

5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller and shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979). All other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods, whether implied by statute, common law or otherwise are excluded.

5.2 The Buyer is satisfied as to the suitability of the Goods for the Buyer's purpose.

5.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

6. Delivery

6.1 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.2 Delivery of the Goods is completed on the completion of unloading or delivery of the Goods at the Buyer's address and the Buyer shall make all arrangements necessary to take delivery of the Goods.

6.3 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.4 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

7. Ownership and Risk

7.1 The risk in Goods shall pass to the Buyer upon delivery of the Goods or upon the Goods being appropriated to the Buyer but kept at the Seller's premises at the Buyer's request.

7.2 The Seller remains the owner of the Goods until the Seller has been paid in full for such Goods.

7.3 The Buyer shall inspect the Goods immediately upon receipt and shall notify the Seller within a reasonable time of delivery if the Goods are damaged or do not comply with any of the Contract. If the Buyer fails to do this he is deemed to have accepted the Goods.

7.4 Any Goods in respect of which any claim of defect or damage is made shall be preserved by the Buyer intact together with the original packing at the Buyer's risk and either:

(a) retained by the Buyer for a reasonable period to enable the Seller or its agent to inspect or Collect the Goods; or

(b) at the Seller's option returned by the Buyer to the Seller who will refund the cost of postage and packing to the Buyer if the Goods are in fact defective.

7.5 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and

(e) give the Seller such information as the Seller may reasonably require from time to time relating to (i) the Goods; and (ii) the ongoing financial position of the Buyer.

8. Cancellation and Returns

8.1 Bespoke Goods made to the Buyer's specification cannot be returned.

8.2 In the case of Goods that are not bespoke, any request to return them must be made to the Seller within 14 days of delivery setting out the reasons for the desire to return the Goods. If it is agreed by the Seller that the goods are to be returned:

a) a Goods Return number obtained from the Seller which must be clearly shown on the returned parcels;

b) the Buyer will be liable for the cost of remedying any damage to the Goods returned where such damage has, in the opinion of the Seller, been caused by the Goods being inadequately packaged by the Buyer or through the Buyer's fault;

c) the Seller reserves the right to make a handling and restocking charge of 25% on Goods which are returned if they were ordered in error or are no longer required; and

d) the Buyer shall pay the costs of returning the Goods to the Seller (except where the Goods are misdescribed or faulty) and the Buyer is advised to ensure the goods are adequately insured during any return journey.

9. Force Majeure

In the event that the Seller is prevented from carrying out its obligations under the Contract for sale as a result of any cause beyond its control such as but not limited to acts of god, war, strikes, lock-outs, flood and failure of third parties to deliver goods, the Seller shall be relieved of its obligations and liabilities under such Contract for sale for as long as such circumstances exist.

10. No Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. Limitation of liability

11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

11.3 Subject to clause 11.2, the Seller's total liability to the Buyer shall not exceed the price of the Goods paid for by the Buyer.

11.4 Subject to clause 11.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

11.5 This clause 11 shall survive termination of the Contract.

12. Complaints

12.1 Complaints about Goods should be raised immediately with the Seller using the contact details in clause 15.4. The Seller aims to respond as soon as possible and within 5 working days.

12.2 All complaints will be dealt with in a fair and confidential manner.

13. Assignment and other dealings

13.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

14. Termination

14.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

14.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

14.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods

supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

14.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

15. Other

15.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

15.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

15.3 If any part of these terms and conditions that is not fundamental is found to be illegal or unenforceable, such finding will not affect the validity or enforceability of the remainder of these terms and conditions.

15.4 The Seller can be contacted by telephoning the customer service team at 01493 742348 or by writing to us at Edison Way, Gt Yarmouth, NR31 0NG, email service@stuga.co.uk