



**CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES
BY S.WALSH & SON LIMITED & SISTER COMPANIES**

1 Interpretation

- 1.1 In these conditions (unless the context otherwise requires):
- (a) **Buyer** shall mean S Walsh & Sons Limited or any Sister Company or subsidiary;
 - (b) **Contract** means the Contract between the Buyer and the Seller for the sale and purchase of the goods and/or the supply and acquisition of the Services;
 - (c) **Goods** means the Goods (or any instalment or part of them) to be supplied pursuant to the Contract;
 - (d) **Order** means the order placed by the Buyer for the supply of the Goods and/or the performance of the services;
 - (e) **Sister Company** means any company owned by S Walsh Holdings Limited.
 - (f) **Seller** shall mean the person, firm or company to whom the Buyer's Order is addressed;
 - (g) **Services** means the services (if any) described in the Order;
 - (h) **Specifications** means the technical or other requirements (if any) for the Goods or the Services contained or referred to in the Order;
 - (i) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

2 General

- 2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any acknowledgment of Order, form of Contract, letter or other communication sent by the Seller to the Buyer.
- 2.2 Any concession made or latitude allowed by the Buyer to the Seller shall not affect the strict rights of the Buyer under the Contract.
- 2.3 If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.
- 2.4 No variation to the Order or these conditions shall be binding unless expressly agreed in writing by the Buyer and signed on its behalf.
- 2.5 The headings in these conditions are intended for reference only and do not affect their construction.

3 Acknowledgment

The Buyer shall be bound by the Order only if the Seller accepts it in writing within 7 days of the date of the Order or within such other period as may be specified in the Order.

4 Quality and description

- 4.1 Without prejudice to any other rights the Buyer may have the Seller warrants to the Buyer that:
- (a) the Goods will:
 - (i) conform as to quantity, quality and description with the particulars stated in the Contract;
 - (ii) (without prejudice to clause **Error! Reference source not found.**) be of satisfactory quality and fit for the purpose held out by the Seller or made known to it either expressly or by implication by the Buyer;
 - (iii) be equal in all respects to any samples or patterns provided by either party and accepted by the other and to the Specifications;
 - (iv) be capable of any standard of performance specified in the Contract;
 - (v) comply with all statutory requirements and regulations relating to the manufacture and sale of the Goods at the time when the same are supplied.
 - (b) the Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance.

5 Inspection testing and samples

- 5.1 If so required by the Buyer the Seller shall submit samples of the Goods for the Buyer's approval before the Goods are delivered or before the Services are performed (as the case may be). Such samples should be marked by the Seller for identification.
- 5.2 The Buyer shall be entitled to inspect and test the Goods during manufacture, processing and storage and the Seller shall at its own cost provide or shall procure the provision of all such facilities as may reasonably be required by the Buyer therefor.
- 5.3 If as a result of any inspection or test under clause **Error! Reference source not found.** of this condition **Error! Reference source not found.** the Buyer's representative is of the reasonable opinion that the Goods or the Services do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply he may inform the Seller accordingly and the Seller shall promptly take such steps as may be necessary to ensure such compliance.

6 Delivery/performance

- 6.1 The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition having regard to the nature of the Goods and the other circumstances of the case.

- 6.2 The Goods shall be delivered and the services performed by the Seller at the time or within the period specified in the Contract and delivered to and performed for the Buyer at the address set out at the head of the Order or to or at such other destination as may be specified in the Contract and in the manner specified in the Contract. Delivery shall take place during the Buyer's normal business hours. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and the performance of the Services.
- 6.3 The Buyer shall have no obligation to pay for or return packing cases, skids, drums or other articles used for packing the Goods whether or not re-usable.
- 6.4 The time of delivery of the Goods and of performance of the Services shall be of the essence of the Contract.
- 6.5 All Goods should be accompanied by a detailed advice note stating the purchase order number and giving full particulars of the Goods supplied except when such Goods are sent directly to premises of the Buyer's customer when the advice note sent with the Goods should not show the Seller's name. A copy of the advice note must be sent to the Buyer on the day upon which the Goods are delivered and an invoice stating the purchase order number must be promptly delivered to the Buyer.
- 6.6 If the Goods are to be delivered or the Services are to be performed by instalments the Contract shall be treated as a single Contract and not severable.
- 7 Storage**
- 7.1 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller shall if his storage facilities permit store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of his so doing.
- 8 Buyer's material and equipment**
- 8.1 All drawings, specifications (including the Specifications) and information (**Material**) supplied by the Buyer to the Seller in connection with the Contract are confidential and the Seller and its officials and employees shall not at any time disclose the Material to any third party without the Buyer's prior written consent.
- 8.2 All jigs, tools, moulds, patterns and other equipment (**Equipment**) supplied to the Seller or ordered by the Buyer from the Seller for the execution of the Contract and the Material shall be maintained in good condition by the Seller and the Seller shall indemnify the Buyer against all loss thereof or damage thereto whilst the same are in the Seller's possession or control.
- 8.3 The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for the Buyer and shall remain the Buyer's property at all times.
- 8.4 Where the Goods or Services are designed, created or otherwise developed by or for the Seller pursuant to the Contract, then all intellectual property rights therein or reasonably required by the Buyer to use the Goods or Services in the course of its business throughout the world (including, without limitation, patents, copyrights, design rights, registered designs, trade marks, service marks and know-how and the rights to apply for any of the foregoing) (**Intellectual Property Rights**) shall belong to the Buyer absolutely. The Seller hereby assigns the Intellectual Property Rights to the Buyer with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Buyer.
- 8.5 The Seller shall at the Buyer's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as the Buyer may reasonably require:
- (a) to vest the legal title in, apply for, obtain and maintain in force in the Buyer's sole name (unless it otherwise directs) the Intellectual Property Rights;
 - (b) to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights;
 - (c) to bring any proceedings for infringement of any of the Intellectual Property Rights.
- 8.6 The Seller irrevocably undertakes that neither it nor any other person will assert against the Buyer or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this condition **Error! Reference source not found. moral rights** shall have the meaning ascribed thereto by the Copyright, Designs and Patents 1988 Act (or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.
- 8.7 All containers, pallets and other packing materials supplied by the Buyer to the Seller shall be maintained in good condition and shall remain the Buyer's property at all times.
- 8.8 At the Buyer's request, the Seller shall promptly return the material and the equipment and the said containers, pallets and packing materials to the Buyer.
- 8.9 Without prejudice to the Seller's liability under the foregoing clauses of this condition **Error! Reference source not found.**, the Seller shall maintain such insurance as the Buyer may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to the Buyer on demand either:
- (a) the policies of such insurances and the receipts for all premiums paid thereunder; or
 - (b) a current certificate of insurance from the insurers under such policies.
- 9 Passing of property**
- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 9.2 The property in the Goods shall pass to the Buyer at the latest on the date of notification by the Seller that the Goods are due and ready for delivery but without prejudice to:
- (a) the passing of property at an earlier time under any statute or rule of law;
 - (b) any right of rejection which may accrue to the Buyer whether under these conditions or otherwise.

10 Rejection

- 10.1 Without prejudice to any other of its rights the Buyer may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with any of his obligations under the Contract.
- 10.2 The Buyer shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery, or if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 10.3 The Buyer shall when giving notice of rejection specify the reason therefor and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall:
- (a) at the Buyer's option:
 - (i) replace such rejected Goods with Goods which are in all respects in accordance with the Contract; or
 - (ii) credit the Buyer with the invoice price thereof.
 - (b) reimburse the Buyer all freight and handling costs reasonably incurred by the Buyer and/or for which it may be liable in respect of such Goods; and
 - (c) reimburse the Buyer all freight and handling costs reasonably incurred by the Buyer in the implementation of a stock recovery, recall or market withdrawal of the Goods or similar goods previously supplied by the Seller in any part of the world.

11 Payment

- 11.1 Payment shall be made within the period after delivery of the Goods or performance of the Services specified in the Contract or if delivery is postponed at the Buyer's request as provided in condition **Error! Reference source not found.** within the same period after the date of such postponement.

12 Assignment and sub-contracting

- 12.1 The Seller shall not without the Buyer's prior written consent assign or transfer the Contract or any of its rights or obligations thereunder to any other person, firm or company.

13 Bankruptcy or liquidation

- 13.1 If the Seller, being an individual, (or when the Seller is a firm, any partner in that firm) shall at any time become apparently insolvent, or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or if the Seller, being a company, shall pass a resolution or the court shall make an order that the company shall be wound up (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver, administrative receiver or administrator shall be appointed of the whole or any part of its assets then the Buyer shall be at liberty to cancel the Contract summarily by notice in writing without compensation to the Seller.
- 13.2 The exercise of any of the rights granted to the Buyer under clause **Error! Reference source not found.** hereof shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to the Buyer.

14 Warranty

- 14.1 Without prejudice to any other remedies of the Buyer, the Seller shall forthwith upon a request by the Buyer so to do:
- (a) replace or (at the Buyer's option) repair all Goods which are or become defective during the period of 12 months from the date of delivery where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, erroneous data or any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement;
 - (b) re-perform any Services found to have been performed defectively within 12 months of the date of their performance.

15 Indemnity

- 15.1 The Seller shall indemnify the Buyer against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Buyer and/or for it may be liable to any third party due to, arising from or in connection with:
- (a) the negligent or wilful acts or omissions of the Seller, his servants, agents or contractors in supplying, delivering and installing the Goods or performing the Services;
 - (b) the breach of any provision of the Contract by the Seller;
 - (c) any defect in the workmanship, materials or design of the Goods or their packaging;
 - (d) any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Goods or the Services unless such infringement has occurred directly as a result of any specification supplied by the Buyer; and
 - (e) any liability under the Consumer Protection Act 1987 in respect of the Goods.

16 Force majeure

- 16.1 The Buyer shall not be liable to the Seller or deemed to be in breach of Contract by reason of any delay in performance or any failure to perform any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond its reasonable control including (but not limited to) strikes, lock-outs, accidents, war, fire, epidemic, pandemic, reduction in or unavailability of power or breakdown of plant or machinery. If the cause of such suspension shall continue for more than 6 months either party shall have the right to terminate the Contract upon giving not less than 7 days' prior written notice to the other and the only liability of the Buyer shall be to pay the Seller for Goods received by the Buyer and Services performed prior to the date of such suspension.

17 Law of the Contract

17.1 The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the parties agree to submit to the non-exclusive jurisdiction of the courts of England.