

**THE CUSTOMER'S ATTENTION IS DRAWN TO CLAUSE 11 WHICH SETS OUT THE SUPPLIER'S LIABILITY TO THE CUSTOMER.****1. INTERPRETATION****1.1 Definitions**

In these conditions the following definitions apply:

**Business Day:** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** means the terms and conditions set out in this document as amended from time to time.

**Contract:** means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** means the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** has the meaning given in clause 12.

**Goods:** means the goods (or any part of them) set out in the Order.

**Order:** means the Customer's order for the Goods, whether submitted orally or in writing as the case may be.

**Schedule of Rates:** means the schedule of rates in respect of the Supplier's products in force at the time of the Order, provided by the Supplier to their trade customers from time to time, a copy of which is available from the Supplier upon request.

**Shipment:** means delivery to the initial carrier in accordance with the delivery terms of the initial Order.

**Specification:** means the specification of the Goods as quoted by the Supplier pursuant to a request by the Customer, including any related plans and drawings, that are explicitly agreed in writing by the Customer and the Supplier.

**Supplier:** means Powrwheel Limited a company incorporated and registered in England and Wales with company number 06541940 with its registered office at 2000 Park Lane, Dove Valley Park, Foston, Derby, DE65 5BG.

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and emails.

**2. ACCEPTANCE OF ORDERS**

- 2.1 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation, where applicable, shall only be valid for a period of 25 days from the date of issue.
- 2.2 The Order shall be deemed to be accepted at the Supplier's discretion.
- 2.3 The issuing of submittal data or materials or any other preliminary requests for information or negotiations shall not be deemed to constitute acceptance of an Order.
- 2.4 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.6 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.6 No amendment to these Conditions will be accepted by Supplier unless specifically agreed to in writing and silence on the part of the Supplier shall not constitute a valid acceptance.

**3. PRICES**

- 3.1 Orders will be invoiced at the price as confirmed to the Customer in accordance with the Supplier's quotation for Goods in accordance with clause 2.1 above (errors and omissions excluded) or, where applicable, in accordance with the Schedule of Rates.
- 3.2 Some Orders may be subject to minimum quantities as set out from time to time by the Supplier.

- 3.3 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of Goods that is due to:
- (a) any factor beyond the Supplier'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 Customer to change delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instruction of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 3.4 All prices stated by the Supplier with in the Supplier's quotation or the Schedule of Rates are exclusive of VAT and VAT will be added at the rate applicable from time to time.

#### **4. INTELLECTUAL PROPERTY**

- 4.1 The Supplier reserves all and any intellectual property rights, concepts, designs, models, samples, logos and/or products that were introduced or sold to Customer. The Specifications (including, but not limited to, all copyright, design right and other intellectual property in them) shall be the property of the Supplier; and the Customer is not entitled to make any use of the Specification other than for the purpose of the Contract.
- 4.2 The Supplier expressly forbids the Customer from producing part or all of;
- a) any product owned by the Supplier and;
  - b) any Goods supplied by the Supplier to the Customer, in any way.

#### **6. TERMS OF PAYMENT**

- 6.1 Unless otherwise stated and agreed in writing between the Supplier and the Customer, invoices are due for payment on Shipment of the respective Order. The Supplier reserves the right to request cash payment on a pro-forma basis. All payments shall be in English Pounds Sterling, or as otherwise agreed between the Supplier and the Customer.
- 6.2 If the Customer fails to take or accept or by their own actions causes Shipment of the Goods to be delayed then except where such failure or delay is caused by a Force Majeure Event of the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall (in the case of Goods to be collected by the Customer) be deemed to have been completed at 9am on the day on which the Supplier notified the Customer that the Goods were ready for Shipment or (in the case of Goods delivered to the Customer) be deemed to have been delivered at the date and time shown on the Supplier's proof of delivery; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 6.3 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per month above National Westminster Bank Plc base rate from time to time. This clause 6.3 shall not prejudice any right that the Supplier may have to immediate payment of the full amount. The Supplier shall also be entitled to recover from the Customer any costs incurred in relation to recovering late payment from the Customer.
- 6.4 If at any time in the Supplier's opinion the Customer is unable or unwilling to meet the terms of the Contract, the Supplier may require satisfactory assurance of full or partial payment as a condition to commencing or continuing to manufacture or making Shipment. If Shipment has been made the Supplier may recover the Goods from the carrier pending receipt of such assurances.
- 6.5 If the Customer does not pay the full amount owed by the due date for payment the price under the Contract shall be paid in addition to all reasonable costs, including legal expenses, incurred in the course of collecting the Goods.

#### **7. WARRANTY FOR GOODS**

- 7.1 Subject to the Supplier having received payment in full from the Customer for the Goods, and subject to clause 7.7 below, the Supplier warrants that on delivery and for a period of 1 year from the date of invoice the Goods shall:
- (a) conform in all material respects with their description and the Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (d) be fit for any purpose held out by the Supplier.
- 7.2 Subject to clause 7.1 above, if:
- (a) the Customer gives notice in writing to the supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
  - (b) the Supplier is given a reasonable opportunity to examine such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - (f) the Goods differ from the Specification as a result of changes made to them so they comply with statutory or regulatory requirements;
  - (g) the Goods are used beyond their Specification; or

- (h) the defect in the Goods is of a cosmetic nature only, including but not limited to paint damage caused by use of the Goods, and the defect does not affect the fitness for the purpose held out by the Supplier under clause 7.1(d).
- 7.4 Except as provided in this clause 7, the supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 Units that have been dismantled in any way shape or form will invalidate all foregoing warranties.
- 7.7 In respect of the following Goods;
- (a) the evolution range of caravan movers; and
- (b) the classic caravan mover,
- The warranty period provided for in clause 7.1 above shall be 5 years from the date of invoice the Goods, not 1 year. This clause 7.7 shall not have any effect where any commercial use has been made of the Goods and in such event that commercial use has been made of the Goods the warranty period shall remain as 1 year.

## **8. PERFORMANCE AND DELAYS**

- 8.1 It is the Supplier's desire to attempt to accommodate the delivery requirements of its Customer's therefore when placing an order the Customer should specify the approximate date upon which the product is required and the Supplier will use its reasonable endeavours to comply with the Customer's request.
- 8.2 Any dates quoted for despatch and/or delivery are approximate only, and the time of despatch and/or delivery is not of the essence. The Supplier shall not be liable for any delay and/or failure in delivery of the Goods that is caused by a Force Majeure Event, the actions or omissions of the courier of the Goods, whether selected by the Supplier or the Customer, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of Goods.
- 8.3 Estimates of normal shipping time are from the time of release of the Goods.
- 8.4 The Customer must supply to Supplier, all required technical information, data (including drawing approvals) and all required commercial documentation. If Shipment and/or delivery are delayed due to outstanding information as detailed in this clause 8.4 the Supplier shall not be liable.
- 8.5 If the Supplier suffers delay in performance due to a Force Majeure Event the date of shipment and/or delivery shall be extended by a period of time equal to the period of the delay. The Supplier will give written notice to the Customer as soon as practicable after becoming expressly aware of any such delay.
- 8.6 Any item of the Goods on which manufacture or shipment is delayed as a result of any avoidable action by the Customer may be placed in to storage by the Supplier at the Customer's risk and the Customer shall pay all charges for storage and other incidental expenses directly incurred by Supplier as a result of the delay.
- 8.7 The Customer shall ensure;
- (a) accurate information is provided to the Supplier as to where the Goods are to be delivered; and
- (b) they have suitable personnel and levels of security for receiving the Goods;
- The Supplier shall have no liability in the event the Customer does not comply with this clause 8.8 and the Supplier and the Customer agree that the Supplier's proof of delivery shall constitute evidence of delivery.

## **8.9 COSTS OF DELIVERY**

- 8.9.1 Unless otherwise agreed between the Supplier and the Customer, the costs of delivery and packaging for Goods, where they are to be delivered within the mainland of the United Kingdom, shall be borne by the Supplier.
- 8.9.2 Where the Customer requires Goods to be delivered to a location outside of the mainland of the United Kingdom, the Customer shall be responsible for the costs and arrangement of such delivery. The Supplier shall have no liability or responsibility in relation to deliveries of Goods to be made outside of the mainland of the United Kingdom.

## **9. SHIPMENT, TITLE AND RISK**

- 9.1 The Supplier 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 Customer to cancel any other instalment.
- 9.2 The risk in the Goods shall pass to the Customer upon Shipment.
- 9.3 The Supplier will select the method of transportation and route unless the terms are f.o.b. point of shipment and the Customer specifies the method and route and will therefore be liable to pay the freight costs in addition to the Contract price.
- 9.4 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
- (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 9.5 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Shipment or delivery; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 9.6 All claims by the Customer for shortages or incorrect items must be made in writing to the Supplier within 7 days of receipt of the shipment.

## **10. CANCELLATION**

- 10.1 The Customer is not entitled to cancel any Contract without the express written consent of the Supplier and any such cancellation will be on such terms as the Supplier considers reasonable.
- 10.2 If as a result of a Force Majeure Event the Supplier is unable to deliver part or all of an Order the Supplier may cancel the Order or balance by giving notice to the Customer as soon as is reasonably practicable.

## 11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

## 12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control.

## 13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

## 14. VARIATION

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

## 15. SEVERANCE

- 15.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 16. NOTICES

- 16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 16 and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier fax or email.
- 16.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.1; if sent by pre-paid first class post or recorded delivery, at 09:00 on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 16.3 The provisions of this clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

## 17. WAIVER

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 18. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 19. GOVERNING LAW AND JURISDICTION

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual dispute or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.