

**H.W. WALLACE & CO LIMITED**  
**Terms and Conditions of Sale**

**1 INTERPRETATION**

**1.1 Definitions**

In these Conditions, the following definitions apply:

“Business Day”	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
“Conditions”	the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.
“Contract”	the contract between Wallace & Co and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
“Contract Documents”	has the meaning given in clause 2.5.
“Customer”	the person or firm who purchases the Goods from Wallace & Co.
“Force Majeure Event”	has the meaning given in clause 13.
“Goods”	the goods (or any part of them) set out in the Order.
“Order”	the Customer's order for the Goods, as set out in the Contract Documents.
“Specification”	any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and Wallace & Co and contained in the Contract Documents.
“Wallace & Co”	H.W. Wallace & Co Limited (registered in England and Wales with company number 10449843) whose registered office is at Curtis Road Industrial Estate, Curtis Road, Dorking, Surrey, RH4 1EJ, UK.

**1.2 Construction**

In these Conditions, the following rules apply:

- 1.2.1 A “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 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.
- 1.2.4 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.
- 1.2.5 A reference to “writing” or “written” includes faxes and e-mails (provided any email is supported by a valid server delivery receipt).

## 2 BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, including any terms and conditions endorsed upon, delivered with or referred to in any purchase order or other document sent by the Customer to Wallace & Co.
- 2.2 Usually a Contract will be entered into as follows:
- 2.2.1 The Customer sends Wallace & Co a request for quotation together with associated documents which may include a technical specification, drawings and revisions thereto, CAD models, standards documentation for process/inspection/finish/cleaning as well as first article inspection (FAIRS) documentation and last article inspection (LAIRS) documentation;
- 2.2.2 Wallace & Co issues a quotation which will remain valid for 30 days or such other period as is stated therein. The quotation may take the form of written correspondence (such as an email to the Customer) or may simply be a reference to Wallace and Co's published price list then in force;
- 2.2.3 The Customer accepts the quotation and Wallace & Co sends the Customer an order acknowledgement in writing referring to these Conditions; and
- 2.2.4 The Customer issues a purchase order against Wallace & Co's order acknowledgment at which point the Contract comes into being.
- 2.3 In some cases there may be (multiple) revisions to the Customer's requirements and Wallace & Co's quotation before the Customer issues a purchase order as described in clause 2.2.4.
- 2.4 In any other case no order from the Customer whether submitted orally or by any form of written form of communication, shall be deemed to be accepted by Wallace & Co unless and until confirmed in a written order acknowledgment by Wallace & Co in which case it shall be accepted subject to these Conditions.
- 2.5 The Contract shall comprise the documents referred to in clause 2.2 or 2.4 (as the case may be) together with these Conditions ("Contract Documents").
- 2.6 The Customer shall be responsible for ensuring the accuracy of the Contract Documents before issuing its purchase order/order.
- 2.7 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 Wallace & Co which is not set out in the Contract.
- 2.8 These Conditions apply to the exclusion of any other terms that the Customer seeks to impose.
- 2.9 Any samples, drawings, descriptive matter, or advertising produced by Wallace & Co and any descriptions or illustrations contained in Wallace & Co'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.
- 2.10 No Contract may be cancelled by the Customer except with Wallace & Co's prior written consent and on terms that the Customer shall indemnify Wallace & Co in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Wallace & Co as a result of cancellation.

### **3 GOODS**

- 3.1 The Goods are described in the Contract Documents.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification or other documents containing designs and information supplied by the Customer, the Customer shall indemnify Wallace & Co against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Wallace & Co in connection with any claim made against Wallace & Co for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Wallace & Co's use of such designs and information. This clause 3.2 shall survive termination of the Contract.
- 3.3 Wallace & Co reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### **4 CHANGES**

- 4.1 The Customer, by written request ("Change Request") delivered to Wallace & Co, shall have the right to request changes to the Goods (including changes to the Specification) and changes to quantities, delivery schedules, methods of shipment, packaging, place of inspection, acceptance and point of delivery of any of the Goods.
- 4.2 No Change Request by the Customer shall be effective, nor binding upon Wallace & Co, unless specifically agreed to in writing by Wallace & Co.
- 4.3 If a Change Request results in a delay in Wallace & Co's delivery of the Goods or an increase or decrease in the cost of the Goods to the Customer, Wallace & Co shall notify the Customer and the parties acting reasonably and in good faith shall negotiate with a view to agreeing an equitable adjustment to the delivery schedule or the price of such Goods (or both) but Wallace & Co shall not be bound to comply with any Change Request until all such adjustments have been agreed and recorded in writing.

### **5 PROTOTYPES AND TESTING**

- 5.1 The Contract Documents may provide for Wallace & Co to manufacture prototypes and/or for the Goods to be subject to acceptance testing.
- 5.2 Where acceptance testing is to take place, the nature of the tests, the test criteria, timetable for testing and the action to be taken if the tests fail, shall be set out in the Contract Documents. The Customer shall comply with its obligations in relation to the acceptance testing as set out in the Contract Documents.

### **6 PACKAGING**

- 6.1 The Customer and Wallace & Co shall agree who will provide and pay for the packaging of the Goods at the time the Contract is entered into, failing which Wallace & Co shall provide the packaging and the cost shall be included in the price.
- 6.2 If Wallace & Co requires the Customer to return any packaging materials to Wallace & Co, this shall be clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Wallace & Co shall reasonably request. Unless otherwise agreed returns of packaging materials shall be at Wallace & Co's expense.

### **7 DELIVERY**

- 7.1 Wallace & Co shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant Wallace & Co and Customer reference numbers, the type and quantity of the Goods (including the part number of the Goods, where applicable) and any special instructions.

- 7.2 Wallace & Co shall deliver the Goods to the location set out in the Order or such other location as the parties may agree at any time after Wallace & Co notifies the Customer that the Goods are ready.
- 7.3 Delivery shall be effected in accordance with Incoterms 2010 Ex Works (EXW), CPT or CIP ("Incoterms") as confirmed in the Contract Documents or, if the Contract Documents are silent, delivery shall be on an EXW (Dorking or Sevenoaks) basis.
- 7.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Wallace & Co shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Wallace & Co with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 7.5 If Wallace & Co fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Wallace & Co 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 Customer's failure to provide Wallace & Co with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 7.6 If the Customer fails to accept delivery of the Goods within 3 Business Days of Wallace & Co notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Wallace & Co's failure to comply with its obligations under the Contract:
- 7.6.1 delivery of the Goods shall be deemed to have been completed at 9:00am on the third Business Day after the day on which Wallace & Co notified the Customer that the Goods were ready; and
- 7.6.2 Wallace & Co shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 7.7 If 10 Business Days after the day on which Wallace & Co notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Wallace & Co may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 7.8 The Customer shall not be entitled to reject the Goods if Wallace & Co delivers the wrong quantity but Wallace & Co shall deliver any shortfall (or collect any surplus) as soon as reasonably practicable thereafter.
- 7.9 Wallace & Co may deliver the Goods in batches (instalments), which shall be invoiced and paid for separately. Each batch shall constitute a separate Contract. Any delay in delivery or defect in a batch shall not entitle the Customer to cancel any other batch.

## **8 QUALITY**

- 8.1 Wallace & Co warrants that:
- 8.1.1 on delivery the Goods shall, for a period of 12 months from the date of delivery, conform in all material respects with the Specification and be free from defects in design, material and workmanship; and
- 8.1.2 any calibration work undertaken by Wallace & Co in respect of the Goods shall be free from defects in workmanship for a period of 3 months from delivery.
- 8.2 Subject to clause 8.3, if the Customer gives notice in writing to Wallace & Co within 10 days of the date of delivery that some or all of the Goods do not comply with the warranty set out in clause 8.1 Wallace & Co shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 8.3 Wallace & Co shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
- 8.3.1 The Customer makes any use of such Goods after giving notice in accordance with clause 8.2;
  - 8.3.2 The defect arises because the Customer failed to follow Wallace & Co's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 8.3.3 The defect arises as a result of Wallace & Co following any drawing, design or Specification supplied by the Customer;
  - 8.3.4 The Customer alters or repairs such Goods without the written consent of Wallace & Co;
  - 8.3.5 The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 8.3.6 The Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.4 Except as provided in this clause 8, Wallace & Co shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

## **9 TITLE AND RISK**

- 9.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 9.2 Title to the Goods shall not pass to the Customer until Wallace & Co receives payment in full (in cash or cleared funds) for the Goods and any other goods that Wallace & Co has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 9.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Wallace & Co's property;
  - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 9.3.4 notify Wallace & Co immediately if it becomes subject to any of the events listed in clause 11.2; and
  - 9.3.5 give Wallace & Co such information relating to the Goods as Wallace & Co may require from time to time.
- 9.4 Subject to clause 9.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Wallace & Co receives payment for the Goods. However, if the Customer resells the Goods before that time, title to the Goods shall pass from Wallace & Co to the Customer immediately before the time at which resale by the Customer occurs.
- 9.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2, then, without limiting any other right or remedy Wallace & Co may have:

- 9.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 9.5.2 Wallace & Co may at any time:
  - 9.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - 9.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **10 PRICE AND PAYMENT**

- 10.1 The price of the Goods shall be the price set out in the Contract Documents or, if no price is so set out, the price set out in Wallace & Co's published price list in force as at the date of delivery.
- 10.2 Wallace & Co may, by giving notice to the Customer at any time up to 7 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 10.2.1 any factor beyond Wallace & Co's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 10.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 10.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Wallace & Co adequate or accurate information or instructions.
- 10.3 Unless otherwise agreed in the Contract Documents the price is ex works and is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 10.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Wallace & Co, pay to Wallace & Co such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 10.5 Unless otherwise agreed Wallace & Co may invoice the Customer for the Goods on or at any time after entering into the Contract.
- 10.6 Where Wallace & Co gives the Customer credit facilities the Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms specified in the Contract Documents. If no payment terms are specified in the Contract Documents, payment shall be made within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Wallace & Co. Time of payment is of the essence.
- 10.7 If in Wallace & Co's opinion of the Customer's credit-worthiness deteriorates prior to delivery of the Goods, Wallace & Co may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to Wallace & Co.
- 10.8 If the Customer fails to make any payment due to Wallace & Co under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 10% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Wallace & Co may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Wallace & Co to the Customer.

## **11 TERMINATION AND SUSPENSION**

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, Wallace & Co may terminate the Contract with immediate effect by giving written notice to the Customer.
- 11.2 For the purposes of clause 11.1, the relevant events are:
- 11.2.1 the Customer commits any material breach of any of these Conditions and, in the case of a breach capable of remedy, fails to remedy the same within 7 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 11.2.2 the Customer makes any company voluntary arrangement (CVA) with its creditors, becomes subject to an administration order or has an administrator appointed;
  - 11.2.3 the Customer goes into administration or liquidation;
  - 11.2.4 the Customer, being a partnership, individual or other legal entity, is subject to anything analogous to the foregoing;
  - 11.2.5 the Customer is subject to anything analogous to any of the foregoing under the law of any jurisdiction; or
  - 11.2.6 the Customer party ceases or threatens to cease to carry on business.
- 11.3 Without limiting its other rights or remedies, Wallace & Co may suspend provision of the Goods under the Contract or any other contract between the Customer and Wallace & Co if the Customer becomes subject to any of the events listed in clause 11.2 or if Wallace & Co reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to Wallace & Co all of Wallace & Co's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **12 LIMITATION OF LIABILITY**

- 12.1 Nothing in these Conditions shall limit or exclude Wallace & Co's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 12.1.2 fraud or fraudulent misrepresentation; or
  - 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979.

12.2 Subject to clause 12.1:

12.2.1 Wallace & Co shall under no circumstances whatever 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

12.2.2 Wallace & Co'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 the price of the Goods.

## **13 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, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **14 GENERAL**

### **14.1 Assignment and other dealings**

14.1.1 Wallace & Co may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, 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 Wallace & Co.

### **14.2 Notices**

14.2.1 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 notified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

14.2.2 A notice or other communication shall be deemed to have been received:

14.2.2.1 if delivered personally, when left at the address referred to in clause 14.2.1;

14.2.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9:00am on the second Business Day after posting;

14.2.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

14.2.2.4 if sent by fax or e-mail, 1 Business Day after transmission.

14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.



**14.3 Severance**

If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**14.4 Waiver**

A waiver of any right or remedy under the Contract or law 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 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.

**14.5 Third party rights**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

**14.6 Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Wallace & Co.

**14.7 Governing law**

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

**14.8 Jurisdiction**

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