

## TERMS & CONDITIONS OF SALE

### 1) GENERAL

Vapormatt Limited (hereinafter called "the Company") only supplies goods or services subject to these Conditions, and any person(s), firm(s) or company(ies) (hereinafter called "the Customer") seeking to be supplied by the Company accepts that these conditions will govern all relations to the exclusion of any other terms, including conditions, warranties and representations, written or oral, express or implied, even if contained in any of the Customer's documents which purport to provide that the Customer's own or some other terms shall prevail, unless specifically agreed otherwise by the Company in writing.

### 2) ACCEPTANCE OF ORDER

- i) Without prejudice to the foregoing, any Customer's order is not deemed to be effective until it is accepted in writing by the Company.
- ii) Once an order has been accepted by the Company it may not be cancelled or varied without the Company's agreement in writing, on terms which will indemnify the Company against loss resulting from such cancellation or variation.
- iii) No representative or agent of the Company has authority to agree any terms or make any representations inconsistent with these Conditions or to enter into any contract except on the basis of these conditions: any such term representation or contract will bind the Company only if in writing and signed by a Director.
- iv) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

### 3) DESCRIPTIVE MATTER

All illustrations, drawings, weights, measurements, ratings, performance figures, specifications, whether or not contained in the Contract, must be regarded as approximate representations only and are not binding in detail unless stated to be so in the Company's contract. The contents of catalogues, price lists, advertisements or other published matter are stated in good faith as being approximately correct. None shall form part of the contract nor shall deviations from them be made the basis of any claim against the Company.

### 4) CUSTOMER'S SPECIFICATION

Where goods are made to the Customer's specification instructions or design, the Customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, registered design, trade mark, trade name or copyright and any loss, damage or expense which it may occur by reason of such infringement in any country.

### 5) DESPATCH

Dates quoted for despatch are to be treated as estimates only not involving any contractual obligations. The estimated times for despatch are given in all good faith and every endeavour will be made to adhere to them. However, the Company shall be under no liability for any loss or damage whatsoever arising directly or indirectly out of delays in or lateness of despatch whether due to the Company's fault or not.

### 6) FORCE MAJEURE

The performance of this contract is subject to variations or cancellation by the Company without the incurrance of any liability owing to any Act of God, War, Civil Commotion, Government Restrictions, Lock-Outs, Strike, Mutiny, Fire, Ice, Floods, Labour Disturbances, or any other cause whatsoever beyond the control of the Company or owing to any inability of the Company to procure the materials, articles or services required for the performance of the contract. The Company shall be the sole judge of the existence of any of the aforesaid difficulties.

**7) TERMS OF PAYMENT**

- i) Payment shall be made :-
  - a) In respect of machines 100% payable at time of order placement.
  - b) In respect of spares, abrasives, chemicals and all other articles or items either by net cash with order or in respect of approved accounts only, 30 days following the date of invoice.
- ii) Credit Card Payments are accepted, but will incur a 2.5% transaction fee based on the total order value.
- iii) Time for payment shall be of the essence of the contract.
- iv) Without prejudice to any other right of the Company, interest will be payable on all accounts overdue by more than 60 days at 8% above the Bank of England Base Rate for the time being as allowed in the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented to incorporate the features of European Directive 2000/35/EC.
- v) All bills of exchange tendered in respect of an order for a machine, must be received by the Company before manufacture can commence.
- vi) The relevant date for the purposes of paragraph 7 shall be the date on which:
  - a) The Customer takes delivery of the goods at the Company's premises or
  - b) The Company despatches from its premises the goods or
  - c) The Customer defaults in his obligations under paragraph 8 or
  - d) Any one of the circumstances in paragraph 11 arises whichever shall first occur.
- vii) For the purposes of paragraph 7 the goods shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out work.

**8) DELIVERY/COLLECTION**

- i) Unless otherwise agreed in writing by the Company:-
  - a) The Company shall deliver the goods to an address or port in the mainland of Great Britain to be specified forthwith by the Company with all necessary instructions as and when so required by the Company: the Company shall be entitled to add to the Contract price a reasonable charge for packaging & delivery and off-loading shall be the Customer's risk and expense and:
  - b) If the Customer is to take delivery of the goods or any instalment thereof at the Company's premises the same shall be collected within 14 days after receiving notification from the Company that the goods are ready.
- ii) In the case of goods to be sent by sea the Company shall be under no obligation to give the customer the notice specified in section 32 (3) of the Sale of Goods Act 1979.
- iii) A charge will be made by the Company due to suspension or deferment of any order by the customer or in the event of the Customer defaulting in the collection or in the giving of instructions for the delivery of the goods or the acceptance of any goods to provide for any costs incurred by the Company or for a reasonable amount in respect of the storage of any goods and interest at the rate specified in paragraph 7 shall be payable from the date of the incurrence of the same.

**9) RISK**

- i) In the case of goods which the Company has agreed to supply the risk in the goods shall subject to any agreement in writing by the Company, pass to the Customer on the relevant date as defined in paragraph 7 hereof (ie at the inception of the event(s) giving rise to the same) or the date (if earlier) on which, the goods being ready for delivery, delivery is postponed at the Customer's request. All other goods shall be at the Customers sole risk at all times and the Company shall not be liable for any loss of or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any servant or agent of the Company.
- ii) Where the Company might otherwise be liable no claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within 3 days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such goods and it shall be a condition precedent to any such liability that the Customer shall if so requested have returned damaged goods to the Company within 14 days of such request. The Customer shall not be entitled to make any claim against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.

**10) PRICES**

- i) Prices are quoted Net ex the Company's works, unless otherwise stated. The Company shall be entitled to increase the price stated in the Contract to take account of variations in the cost of raw materials, fuel, power, components, labour, transport overheads (or other production costs) rates of currency exchange or in the Customer's specifications instruction or design (including any alteration arising from error or inadequacy therein) or in the event that the Customer orders part only of the quantity referred to in any quotation.
- ii) The price quoted is exclusive of import duties, purchase taxes, value added taxes etc, originating in the country of import
- iii) Price is exclusive of any carriage.

**11) DEFAULT BY CUSTOMER**

If the customer shall fail to make payment when it becomes due or shall make default in or commit any other breach of his obligations to the Company or shall commit any act of bankruptcy or shall have any execution of distress levied upon his goods or property or being a Limited Company shall pass any resolution or suffer any petition to be presented to the Court to wind up such Company's business, or if a Receiver of the whole or any part of its assets or a Liquidator to be appointed, the Company shall have the right forthwith to defer or cancel any further deliveries and/or treat the contract of which these Conditions form part as determined but in each case without prejudice to its right to the full purchase price for goods delivered and for damages for any loss suffered in consequence of such deferral cancellation or determination.

**12) PROPERTY**

The following provisions shall apply to all goods which under the contract the Company agrees to sell or supply to the Customer. No failure by the Company to enforce strict confidence by the Customer with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice limit or extinguish the Company's rights under this paragraph.

- i) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Customer if so required by the Company shall store the goods separately from goods not being the property of the Company and in such a fashion as to be readily identifiable by the Company who shall be entitled to examine the goods upon reasonable notice, to require that the goods shall be delivered up to it and to recover the same and for the purpose of exercising such

- rights the Company its employees and gents with appropriate transport may enter upon the Customer's premises and any other location where the goods are situated.
- ii) The Customer shall maintain all appropriate insurance in respect of goods from the date on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company shall hold all insurance monies received in respect thereof as trustee for the Company and separate and identifiable from all other monies and shall forthwith remit to the Company the full purchase price of the goods less any part thereof which has already been paid.

**13) GUARANTEE**

- i) All goods sold by the Company are supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the contract is a contract of sale, all other conditions, warranties and other terms express or implied statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that in and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
- ii) Save as otherwise provided in these Conditions the Company's liability in respect of any defect in or failure of goods supplied or work done and not arising in whole or part by improper use by the Customer is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of goods which within 12 months of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or material and in the event of any inaccuracy in any weight dimensions or other description which has formed a representation or is a part of a contract the Company's liability in respect of any such inaccuracy shall not exceed the price of the goods to which the description relates. Conditions precedent to the Company's liability hereunder shall be that:-
- a) The Customer as soon as reasonably practicable:-
- 1) shall have given to the Company reasonable notice of the defect, failure or inaccuracy and
  - 2) shall have either returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request
- b) In the case of a defective machine:-
- 1) the initial start up or commissioning on the Customer's premises shall have been carried out by the Company and
  - 2) maintenance thereof must have been carried out in accordance with the maintenance schedule supplied by the Company and
  - 3) no abrasives other than processing media or material shall have been used in conjunction with the machine unless manufactured supplied or recommended in writing by the Company for such use and
  - 4) no part shall be fitted to or used in conjunction with the machine unless manufactured supplied or recommended in writing by the Company for such use and
  - 5) any dismantlement or repair of the machine shall except as laid down in the maintenance schedule supplied by the Company have been carried out only by the Company or by some other person expressly approved by the Company in writing as suitable for such operation. The Company shall have no other or further liability in respect of any direct, indirect or consequential loss or damage sustained by the Customer arising from or in connection with any such defect failure or inaccuracy as aforesaid.

- iii) The Guarantee mentioned aforesaid shall not cover parts which are subject to abrasion and therefore wear and in the case of the goods supplied by the Company and being of another's manufacture its responsibility hereunder may be limited (so far as the Company is capable) of assigning to the Customer the benefits of any guarantee or warranty given to the Company.
- iv) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph at any time specified for delivery under the contract shall be extended for such period as the Company may reasonably require.
- v) Save as hereinbefore provided and subject to the provisions of Section 2 (1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or willful default on the part of its servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work.

**14) COMPONENT HOLDING FIXTURES**

Except in specific instances the Company does not provide component holding fixtures or accessories, these being the responsibility of the Customer. Neither failure of the Customer's fixtures or accessories during the acceptance testing of a machine in the Company's factory prior to dispatch nor delay in the supply of such fixtures or accessories shall prevent the Company from dispatching the machine.

**15) INSTALLATION**

Costs of installation on the Customer's premises are not included in the price quoted unless expressly stated. Where the same is included the costs are based on the work being executed during normal working hours and overtime will be charged extra. The Company does not guarantee the skill or ability of its employees and it must be kept indemnified by the Customer against all loss or damage incurred during or arising out of work on which its employees may be or have been engaged. Time spent attending machinery after starting will be charged for unless otherwise agreed. Site work is accepted on the understanding that a free supply of light and power for any portable tools, including gas and arc welding equipment, will be made available by the Customer.

**16) HEALTH AND SAFETY**

The attention of the Customer is drawn to the provisions of Section 6 of the Health and Safety at Work Act 1974. The Company will make available upon request information relating to the use of the goods to ensure that as far as is reasonably practicable they will, when put to that use, be safe and without risks to health. The Customer warrants that he will ensure that any person to whom he supplied the goods is made aware that such information is available from the Company.

**17) PERFORMANCE**

All performance and finishes quoted are approximate only unless such performance or finish has been guaranteed within certain tolerances these being quoted only after specific tests on the Customer's components have been carried out, and an official Test Report issued. The cost of this Test and Report is not included in the price.

**18) LAW**

The proper law of all contracts with the Company shall be English law, which shall govern in all respects the construction and effect of such contracts and of these Conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.