



TERMS & CONDITIONS OF SALE

1. General
 - a. In these terms and conditions:
 - i. "the company" means Whisper Controls Limited, Registered in England & Wales No.10444619
 - ii. "contract" shall be as defined in clause 1b.
 - iii. "customer" means the person with whom the company contracts for the supply of products pursuant to these conditions.
 - iv. "purchaser" means the third party that requires the products and instructs the customer to order the products on their behalf.
 - v. "order" means any order submitted by the customer to the company
 - vi. "products" means the goods to be supplied by the company as referred to and as described in an order.
 - vii. "quotation" means the quotation submitted to the customer by the company, together with these conditions, prior to submission of an order which quotation details the prices at which the customer may order the products and shall remain valid for a period of 3 months.
 - viii. "writing" includes fax and e-mail.
 - b. Until the customer shall have completed and returned to the company a credit application form which the company shall have accepted, no products will be delivered to a customer without the customer having first paid in full for the products. Clause 7a. shall be construed accordingly.
 - c. A contract shall come into force between the parties each time that a purchase order is received by the company from a customer in response to a quotation. The terms of the contract shall comprise the quotation (as altered by any price increase under clause 6d.), the order and these conditions of sale.
2. Delivery
 - a. Delivery shall be deemed to have taken place in the case of ex-works sales when products are made available for collection by the company for the customer or their carrier and in all other cases upon delivery by the company to the agreed mainland UK delivery point, airport or port but in the case of delivery on pallets before the products are unloaded which is the responsibility of the customer whether conducted by the purchaser or another third party designated by the customer.
 - b. The company shall not be obliged to make a delivery unless the company has received all the necessary information, drawings and approvals from the purchaser or customer and the customer acknowledges that any delays or alterations by the customer may result in delayed delivery for which the company will not be responsible.
 - c. Although the company endeavours to meet the delivery requirements all dates and times for delivery are estimated and do not constitute a guarantee of delivery by the company. The customer shall have no right to damages or to cancel the contract for delay arising from any cause to meet any delivery times given in the quotation or order.
 - d. The customer shall be liable to the company for any demurrage costs incurred in the event of vehicles being unduly delayed at the point of delivery.
 - e. On delivery of the products the company will, or procure that its carrier will, leave a delivery note with the customer, purchaser or their carrier.
3. Shortages and damage on delivery inspection
 - a. The customer shall have no claim for shortages or of damage to the products on delivery which are or would be apparent on inspection unless the customer, purchaser or third party designated by the customer:
 - i. Unpacks and inspects the products as soon as reasonably practicable
 - ii. Notifies the company of any shortages or damage (otherwise than by a qualified signature on the delivery note) within two working days of receipt and
 - iii. Demonstrates to the satisfaction of the company that such shortages or damage occurred prior to delivery
 - b. The customer shall have no rights in respect of shortages or damage unless the company is given a reasonable opportunity to inspect the products and investigate any complaint before any use of or alteration to or interference with the products.
 - c. On a valid complaint made in accordance with this clause the customer shall be entitled (in the case of shortages) to receive within a reasonable time a delivery of products equivalent to the shortfall and (in the case of defects) to repairs to or replacements for the affected products or at the company's option a credit for the price thereof but the company shall have no further liability whatsoever.
 - d. If a complaint of shortages or damage is not made to the company in accordance with clause 3 then the products will be deemed to be delivered complete and undamaged in accordance with the contract and the customer shall be bound to pay for the same accordingly.
4. Risk and Title
 - a. Risk of damage to or loss of the products shall pass to the customer upon delivery and from that time the customer is solely responsible for all damage, loss of or deterioration to the products.
 - b. Title to the products shall not pass to the customer until the company has received in cash or cleared funds all monies payable (whether or not due) to the company in respect of all products ordered by the customer under this or any other contract.
 - c. Until title has passed to the customer the company may require the customer to deliver up to the company all products in respect of which the company has title and if the customer fails to do so forthwith the company's officers, employees, representatives or agents shall be entitled to enter upon any premises where such products are kept for the purposes of recovering the same.
5. Cancellation and amendment
 - a. No contract can be amended or cancelled except with the company's approval in writing and should such approval be given the customer shall indemnify the company against any costs, losses or expenses resulting from any cancellation or amendment.
6. Price
 - a. Unless otherwise agreed in writing all prices shall be stated in the valid quotation.
 - b. Unless stated in the quotation all prices are exclusive of delivery and are ex works.
 - c. All prices are exclusive of VAT.
 - d. The company reserves the right at any time prior to delivery by giving notice in writing to increase the price if there is any increase in the cost of materials, labour, transport or utilities or if the costs of the company are increased by any other factor beyond the reasonable control of the company; or if the customer requests any alteration in quantity, design or specification to that stated in the quotation. In such circumstances the customer shall be requested to approve such price increase until which time the company shall postpone delivery. If no such approval is given by the customer within 10 working days of such notice of price increase from the company, the contract shall lapse and neither party shall have any further liability to the other under the contract.
7. Terms of Payment
 - a. Unless otherwise agreed by the company in writing, the customer shall make payment within 30 days month end following the date of invoice. The company shall be entitled to issue an invoice on or following the date on which the products referred to in each quotation are delivered or would have been delivered, save for postponement or delay otherwise than due to default on the part of the company.
 - b. No disputes arising under this contract shall serve to permit payment by the customer of sums due to the company to be delayed nor shall disputes interfere with prompt payment in full.
 - c. In the event of default in payment by the customer the company shall be entitled, without prejudice to any other right or remedy:
 - i. To suspend without notice all further deliveries on this or any other contract between the company and the customer
 - ii. To charge interest on a daily basis (after as well as before judgement) on any amount outstanding at the rate of 8% per annum above the bank rate of the Bank of England from the due date of payment until the actual date of payment by the customer.
 - d. Any order is divisible and the company reserves the right to make special deliveries of the products under the same contract and to send invoices for each special delivery. Any invoice for a delivery shall be payable in full and any failure whatsoever by the company in respect of any one delivery shall not entitle the purchaser or customer to repudiate the contract or to cancel subsequent deliveries of the products remaining to be delivered under the contract.
8. Specifications
 - a. The customer acknowledges that it has not specified any particular use for the products and that it is entirely its own responsibility to satisfy itself that the products are suitable for the use which it intends
 - b. The company reserves the right to make changes in dimensions or other specifications of the products as are required to conform to applicable standards or laws or are otherwise within reasonable limits having regard to the nature of the products. Dimensions specified by the company are to be treated as approximate.
9. Warranty
 - a. The company warrants that its products are of satisfactory quality at the time of their delivery. Subject always to clause 3, any defective products shall be replaced or repaired or, at the company's option, a credit or refund for the price thereof shall be given provided in every case that:
 - i. The company receives written notice of the defect within 12 months of delivery.
 - ii. No alteration to or interference with the products alleged to be defective takes place before the company is given access to the products to inspect and test the same
 - iii. The customer has not defaulted in its obligation to make payment of the price for the products
 - iv. The defect should not be attributable to incorrect storage or use of the products
 - v. The defect does not arise by reason of a design specification or instruction from the customer
 - b. The company shall not be liable in respect of loss or damage arising from any continued use made of products after the customer or purchaser became or ought reasonably to have been aware of a defect in the event of a valid claim being made in accordance with clause 9:
 - c.
 - i. The customer shall be bound to accept repaired or replacement products or, at the company's option, credit or repayment for those products as are defective and shall not be entitled to terminate the contract
 - ii. If the company does not repair or replace products within 60 days or such longer time as may be reasonable then the customer's sole remedy shall be an entitlement to credit or repayment in respect of the defective products.
 - d. While the company may provide a list to the customer of third parties who may be contacted to install the products, this is provided without liability on the part of the company and the customer must satisfy itself as to the capabilities of such third parties.
10. Liability
 - a. In the event of a valid claim being made in accordance with clause 9:
 - i. The company's liability to give credit or repayment in respect of the defective products, whether in respect of one claim or in aggregate, shall not exceed the contract price payable for the supply of products provided under it, plus the cost to the purchaser of any and upon supplying evidence satisfactory to the company of having installed the defective products;
 - ii. The company's product liability for flood or other damage caused to the property of the purchaser or any third party arising out of the company's negligence in the design of, or workmanship in, or materials used in the products shall not exceed £500,000;
 - iii. The company shall have no further liability to the customer or any purchaser in connection with or arising from any defective products due to the quality, condition, suitability, durability, safety or any other aspect or feature of the products; and
 - iv. Nothing in these conditions shall exclude or limit the company's liability in respect of death or injury to any person arising out of the company's negligence in the design of, or workmanship in, or materials used in the products.
11. Company literature, samples and technical information
 - a. The information contained in advertising, sales, technical and other literature issued by the company may be relied upon to be accurate in the exact circumstances in which it is expressed. Any illustrations, performance details, examples of installations and methods of assembly and all other information and data in such literature are extracts from and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless it is specifically referred to in the quotation
12. Patents and Trademarks
 - a. No indemnity, warranty or representation is given by the company that the product does not infringe any letter patent, trademarks, registered designs or other industrial rights owned by a third party.
 - b. The company shall have no liability in respect of claims for infringement or alleged infringement of third parties' patent or other intellectual property rights arising from the manufacture or supply of the products to the customer's instructions or in accordance with design plans or specifications given by the customer and the customer shall indemnify the company against all losses, damages, expenses, costs or other liability arising from such claims.
13. Confidential Information
 - a. All drawings, documents, records, computer software and other information supplied by the company are supplied on the express understanding that all intellectual property rights therein is reserved to the company and that the customer will not without written consent of the company either give away, loan, exhibit or sell the same or extracts therefrom or copies thereof or use the same in any way except in connection with the products in respect of which they are issued.
14. Force Majeure
 - a. The company shall be excused performance of its obligations whilst and if affected by act of God, governmental restriction condition or control, any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not, default by suppliers of the company, shortage of materials or by any other act, matter or thing beyond its reasonable control including failure by the customer to carry out anything required for performance of the contract.
15. Termination
 - a. Without prejudice to any other rights or remedies of the company it shall be entitled in any of the following circumstances to terminate (in whole or in part) this and any other contract whatever made between the company and the customer and/or to suspend deliveries and/or to receive upon demand payment of all monies payable under any such contracts whether or not otherwise due:
 - i. The customer makes or proposes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation
 - ii. An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the customer
 - iii. The customer becomes unable to satisfy its debts as they fall due or ceases, or threatens to cease to carry on business
 - iv. The company reasonably believes that any of the events mentioned above or any equivalent or similar event under any relevant laws to which the customer or any connected person (as defined by section 1122 Corporation Tax Act 2010) is subject has occurred or may occur
 - v. The customer or any connected person (as defined above) commits any breach of this or any other contract made between the customer and the company
16. Notices
 - a. Any notice shall be in writing and shall be:
 - i. Delivered by hand or by pre-paid first-class post or other next working day delivery service at the registered office of the addressee (if a company) or its principal place of business (in any other case); or
 - ii. Sent by fax to the addressee's main fax number; or
 - iii. Sent by e-mail to the addressee's e-mail address. The company's e-mail address is hello@whispercontrols.com or such other e-mail address as shall be used by the company in sending the quotation.
 - b. Any notice shall be deemed to have been received:
 - i. If delivered by hand, on signature of a delivery receipt
 - ii. If sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second working day after posting or at the time recorded by the delivery service.
 - iii. If sent by fax, at 9.00 am on the next working day after transmission.
 - iv. If sent by e-mail, at the time that the sender receives from the addressee either an acknowledgement or automatically generated read receipt confirmation.
 - c. This clause does not apply to the service of any proceedings or other documents in any legal action.
17. Law and Jurisdiction
 - a. The contract shall be governed and interpreted exclusively according to the laws of England & Wales and shall be subject to the exclusive jurisdiction of an English or Welsh Court