

MARLOW ROPES LIMITED

Terms & Conditions of Sale

Part I – Applicable in all cases

1. Contract

- 1.1. These terms apply to all supplies of goods from Marlow Ropes Ltd and/or its wholly owned subsidiary, Marlow Ropes, Inc. ("we" or "us") to its
- 1.2. customer ("you"). These terms, together with the details of the goods to be supplied by us ("the Goods") and any other terms set out in our Acknowledgement of Order contain the entire contract between you and us ("the Contract") relating to the goods. Any terms which you have put forward do not apply unless we specifically agree to them in writing. Each Acknowledgement of Order that we issue, together with these terms, is a separate Contract.
- 1.3. Part I of these terms applies to all supplies of Goods from us to you. Part II applies only to all Contracts for Goods which we design specifically for you or where there is some other element of service tailored to your requirements. Part III only applies where the Goods are to be exported.
- 1.4. Any order which you place for Goods (an "Order") only becomes contractually binding when accepted by us in writing. Any credit facility that we offer to you does not itself constitute acceptance of an order.
- 1.5. Amendments to Contracts are not valid unless they are agreed by both you and us in writing. Any provisions in our Acknowledgement of Order prevail over these terms if there is a conflict between them.

2. Price and Payment

- 2.1. The price for the Goods stated in the Contract ("the Price") includes packing and delivery ex-works. If you ask us to deliver the Goods to you, and if we accept, we will charge extra for delivery.
- 2.2. The Price is subject to the addition of VAT (UK) and any other taxes or duties, which you will pay (except tax on our income) if applicable.
- 2.3. Any sums paid as a deposit, retainer or prepayment are not refundable except under an express warranty in the Contract.
- 2.4. We will invoice you on the date of Delivery (as defined in Clause 4.2) or despatch of the goods, and you must pay us in full within 30 days end of month, of the date of our invoice unless we agree other payment terms in writing.
- 2.5. If you do not pay us on time, we may (in addition to exercising any other contractual or legal right):
 - a) suspend further work and deliveries to you on any account; and
 - b) charge you interest at the rate of the base lending rate set by the Bank of England plus 8%, the rate established by the Late Payment of Commercial Debts (Interest) Act 1998, from the date of the invoice to the date we receive payment, both before and after judgement.
- 2.6. We may demand security for payment before proceeding with any Contract.
- 2.7. In accordance with UK Money Laundering Regulations, it is not this company's policy to accept payments in cash of any denomination exceeding £10,000 (USD\$16,000).

3. Changes

- 3.1. If any information you supply is inadequate or incorrect, or if you request and we accept a change to the Contract, we may alter the Price and estimated delivery dates as we may consider reasonable, and we will notify you of any changes. Without limiting the general effect Clause 3.1, we will be entitled to recover all of the net cost to us of wasted or additional labour and transport.
- 3.2. We may, before or after the date of the Contract, alter the specification of the Goods or any part of them provided that this will not adversely affect their performance. The Contract is not a sale by sample.

4. Delivery

- 4.1. If the Contract states a delivery date or schedule for any delivery of the Goods, the date or schedule is only an estimate, and a failure by us to meet any date or schedule will not be a breach by us of the Contract or give you any right to terminate the Contract, claim damages or make any other claim.
- 4.2. Delivery occurs when we make Goods available for collection at our premises, or otherwise if we agree in writing ("Delivery"). We may deliver part of the Goods covered by any Order when ready or after the estimated delivery date, and invoice you for that part upon Delivery.
- 4.3. If you do not accept delivery of the Goods when we notify you that they are ready, or on or after that due date for delivery, we can invoice you for the Goods. We can also charge you for any storage, transport, insurance or other costs that we incur as a result of your failure to accept delivery, in addition to any other rights we have under the Contract.

5. Risk and Title

- 5.1. Risk in the Goods passes to you when Delivery occurs. From that time, you must keep the Goods and any derivatives from them insured against all insurable risks, to a value not less than the Price plus the price of any other goods with which the goods have been mixed or incorporated, until title has vested in you under Clause 5.2. Until title in the Goods has vested in you, any insurance money payable in respect of the Goods and any derivatives from them must be paid to us as soon as you receive it to the extent of any outstanding sums due from you to us in respect of those Goods.
- 5.2. Title in the Goods remains with us until the later of (i) Delivery and (ii) our receipt of payment in full of all sums due from you in respect of the Goods and under any other Contract. Until title in the Goods has passed to you, you must store the Goods separately, not incorporate them into any other item, and not use or dispose of them.
- 5.3. If you do not comply with any of the terms of this Contract, or if you suffer insolvency, liquidation, bankruptcy, winding up, administration, receivership or any similar event in any jurisdiction (or if proceedings or petitions for any of them are commenced or presented by anyone), then for so long as title in the Goods remains with us, we may demand the immediate return of the Goods (at your cost), and you give us irrevocable permission to enter your premises to recover the Goods.

6. Warranties

- 6.1. We will inspect the Goods before Delivery. We will not test the Goods unless we specifically agree to do so, for which we may charge extra. If we agree to perform tests and you do not attend, we may proceed with the tests and will notify you of the results – you may not request further tests.
- 6.2. You must examine the Goods upon Delivery for any shortage or obvious material defects ("visible Defects") and notify us of them within 7 days. We will repair or replace Goods with Visible Defects provided that you return them to us within 18 days of delivery. If, upon our inspection or testing of the goods, we are of the reasonable opinion that there is no Visible Defect, you will be responsible for our expenses in the inspection or testing and in returning the Goods to you. If you have not notified us of any Visible Defects within 7 days of Delivery, you are deemed to have accepted the Goods. Once you have accepted the Goods, your only remedy will be under Clause 6.3 below.
- 6.3. We will (at our choice) repair, replace or refund the Price of any Goods which have defects other than Visible Defects only if you notify us of the defects within 6 months of Delivery ("the Warranty Period"). For the purpose of this Clause 6.3, "defect" means:
 - a) failure by the Goods to meet their description in a material manner
 - b) any fault in the Goods caused by our negligence
- 6.4. You must allow us to have access to the Goods throughout the Warranty Period.
- 6.5. We will use reasonable skill and care in any services that we provide under the Contract
- 6.6. All Warranties, conditions, guarantees and other terms which are not expressly set out in the Contract (whether made orally or in writing and including all that would be implied by law), are excluded. The remedies described in Clause 6 are your only remedies in respect of the Goods.
- 6.7. We will use reasonable endeavours to allow you the benefit of any rights we may have against suppliers of components included in the Goods.
- 6.8. If you are a consumer, nothing in the Contract affects your statutory rights..

7. Liability

- 7.1. Subject to the other items expressly set out in the Contract, we will not be liable to you or to any other person for the following types of loss or damage beyond the following amounts:
 - a) for all loss or damage to the Goods or to other tangible or intangible property and for death or personal injury, which is caused by our breach of contract, defects in the Goods, lost (but not negligence except in the case of loss or damage to the Goods) or otherwise: OUR LIABILITY IS LIMITED TO THE PRICE PAYABLE FOR THE GOODS IN RELATION TO WHICH OR AS A RESULT OF WHICH THE CLAIM AROSE;
 - b) for all loss or damage to tangible property other than the Goods which is caused by our negligence: OUR LIABILITY IS LIMITED TO AN AGGREGATE OF £5 MILLION IN RESPECT OF ALL CLAIMS THAT YOU MAY HAVE.

- c) for all indirect, special or consequential loss or damage, including loss of profits, business, savings, sales and goodwill, however caused (including by our negligence): NO LIABILITY
- 7.2. In addition to the limitations or our liability set out in Clause 7.1, we will not be liable to you or to any other person for any loss or damage which is caused:
 - a) by any change in specification or performance of components supplied to us by other persons;
 - b) by your failure to follow any instructions that we supply in relation to the Goods (which you agree to follow), or to use the Goods for the purpose(s) that we expressly state that they are intended for (if any);
 - c) by your failure to satisfy yourself before entering the Contract that they will be adequate for the purpose(s) for which you intend to use them (which is your responsibility to ensure, not ours);
 - d) by any alteration of the Goods by any person other than us;
 - e) to any property that you supply to us (which you must ensure), however caused (including by our negligence).
 - 7.3. Nothing in the Contract limits our liability for death or personal injury caused by our negligence.

8. Indemnities

- 8.1. You agree to indemnify and defend us against all claims, losses, damages costs and expenses ("Indemnifiable Items") arising from claims by third parties in relation to the use or procession by any person (except us) of the Goods, except to the extent that we would be liable to you under the Contract relating to the Goods.

9. Termination and Suspension

- 9.1. We may terminate, or suspend our performance of, all or part of any Contract with immediate effect if:
 - a) you breach any term of any contract and do not remedy the breach within 15 days of us giving you notice of the breach; or
 - b) you suffer insolvency, liquidation, bankruptcy, winding up, administration, receivership or any similar event in any jurisdiction, or proceedings or petitions for any of them are commenced or presented by anyone. We will give you notice of termination or suspension as soon as we are reasonably able.
- 9.2. If a Contract is terminated, all sums payable under it become immediately due and payable.
- 9.3. If a Contract is terminated by you where Pro Forma payment has been made in advance, we reserve the right to retain up to 100% of the invoiced amount to cover costs incurred.

10. Intellectual Property Rights

10. We own all copyright, design rights, trade marks and other intellectual property rights in the Goods. You must not copy, remove alter or deface any of our trade marks.

11. Force Majeure

11. Neither party will be liable to the other for any Indemnifiable Item arising from any delay or failure in performing its obligations due to circumstances beyond its reasonable control including but not limited to earthquake, fire, flood, storm, severe weather, act of God, act of government, civil commotion, riot, war, strikes, shortage of labour, interruption of communications or transport and inability to obtain supplies.

12. General

- 12.1. This Agreement is governed by English Law, and you submit to the exclusive jurisdiction of the English Courts.
- 12.2. Each Party agrees not to disclose confidential information to a third party or to use it other than as necessary for the performance of the Contract or the supply of the Goods to other persons, or as required by law. Confidential information means the confidential information of the other party or its suppliers and customers, which is designated as confidential at the time of disclosure or which is discovered by the first party while at the premises of the owners of the information.
- 12.3. We will have a lien over all Goods and items that you have supplied which are in our possession until you pay in full all the money that you owe us. That is to say, we may, for example, sell the Goods or items to another person if you do not pay us what you owe us on time.
- 12.4. All notices or other communications must be sent to the relevant party's address set out in the Contract, by hand, by registered post (air-mail if overseas) or by fax. Delivery is deemed to occur upon delivery by hand, two days after posting (five days if by air-mail) and upon successful completion of transmission by fax.
- 12.5. If any clause or sub-clause of a Contract is found invalid or unenforceable, it will be severed from the Contract, and the rest of the Contract will continue to have full effect.
- 12.6. We may assign or sub-contract any Contract or part of it.

Part II – Additional terms for bespoke Goods

13. If any of the Goods are to be produced by us to a design, specification or particular requirements that you supply ("Commissioned Goods"), you grant us a licence to use the design and/or specification to produce and to sub-contract the production of the Commissioned Goods. You warrant that you own all the necessary rights to grant this licence. You agree to indemnify and defend us against all Indemnifiable Items arising out of any claim that our procession of the Commissioned Goods or your designs and/or specifications, or our production of the Commissioned Goods to the design, specification or requirements that you supply, infringes another person's intellectual property or other rights.
14. If we design Commissioned Goods for you then unless we agree otherwise, we will own all copyright, design rights, trade marks and other intellectual property rights in the Goods.
15. You agree that we may include our trade marks in Commissioned Goods, and you agree not to copy, interfere with or remove those marks.
16. We will not be responsible for the performance of Goods that we produce to your design, specification or requirements, or for any ensuing liability, and you agree to indemnify us against all Indemnifiable Items arising from such liability.
17. Unless you tell us not to, we may destroy any of your design, specification or other documents that we hold if you have not asked us to produce any Goods on the basis of those documents for 12 months, without any liability to you.
18. If any work that we do for you is to be charged on a time and/or materials basis, our records will be conclusive.
19. If you supply any tools, materials, drawings, specifications or other items to us for the production of the Goods, you will indemnify and defend us against all Indemnifiable Items arising from any inaccuracy or defect in them, however they arise.
20. You will also indemnify and defend us and our employees, agents, sub-contractors and representatives against all Indemnifiable Items incurred as a result of any of us or them attending your premises or using your equipment.

Part III – Terms applicable to Exports

21. The following clauses apply if the Goods will be delivered to a different country than the country in which they are manufactured or otherwise stored by Marlow Ropes Ltd and Marlow Ropes, Inc.
22. We may require payment in advance of shipment, in which case any time stated in the Contract for payment is of the essence, entitling us to terminate the contract and claim damages if you do not make the payment on time.
23. If the Goods are to be supplied FOB United Kingdom Port, you must nominate a vessel to receive the Goods. If you do not do so by the date for Delivery (as defined at Clause 4.2), Clause 4.3 will apply as if you have not accepted delivery.
24. You are responsible for obtaining any import and/or export licence and/or exchange control permission and all other relevant permits or authorisations, at your cost. You will indemnify and defend us against all Indemnifiable Items arising as a result of your failure to do so.