

Kwikbolt USA Terms & Conditions of Sale of Goods

1. Interpretation

1.1 In these Conditions the following defined terms shall have the following meanings:

- “Buyer” means any party who either purchases Goods from the Company and/or commissions any Services;
- “Company” means Kwikbolt USA - Registered Office: 16192 Coastal Highway, Lewes, Delaware, 19958, USA;
- “Conditions” means these terms and Conditions of sale and supply of Goods and or Services;
- “Contract” means the contract for the sale and supply of Goods and/or Services;
- “Goods” includes Fasteners (unless the context or these Conditions otherwise provide) and any other goods supplied by the Company to the Buyer;
- “Machinery” means machinery and/or equipment and/or tools supplied and sold to the Buyer by the Company ;
- “Services” means any or all the following:-
 - the engineering of temporary fastener and tooling;
 - the delivery of drawing and reports.
- “VAT” means Value Added Tax in the UK and Ireland at the current rate specified by HMRC.
- “Writing” includes letter, email, telex, cable, facsimile transmissions and any other comparable means of communication

2. Basis of Sale and Supply

2.1 These Conditions shall apply to the sale and supply by the Company of all Goods and/or Services purchased by the Buyer and these Conditions shall govern the contract to the exclusion of any other terms and Conditions introduced or submitted by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.

2.3 Any typographical, clerical or other error in omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.4 Any tenders or quotations submitted to the Buyer shall remain valid for the period stated therein, but if no period is specified such tenders and quotations shall be valid for 30 days from the date thereof.

3. Orders and Specifications

3.1 Where the Company confirms the details of the Contract in writing, the Buyer shall be under a duty to bring discrepancies to the Company's notice immediately, and if the Buyer fails to do so, the Buyer shall be bound by the details contained, mentioned or referred to in the written confirmation of the contract.

3.2 The Company reserves the right to make any changes to the specification of the Goods which are required so that the Goods conform with any applicable statutory or territory requirement, PROVIDED THAT any such changes shall not materially affect the performance of the goods.

3.3 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

4. Delivery

4.1 The Company shall reasonably endeavour to deliver the Goods to and/or perform the Services at the Buyer's premises or such other address as may be agreed between the parties on the date indicated by the Company or the date agreed between the parties, but the time of delivery or performance shall not be of the essence and if despite those endeavours, the Company is unable for any reason to fulfil any delivery of the Goods or perform the Services on the date so indicated, the Company shall not be deemed to be in breach of contract or have the liability to the Buyer.

4.2 The Company shall have the right to deliver any Goods ordered in instalments.

4.3 Failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of the Goods delivered in any one or more instalments shall not entitle the Buyer either to treat the contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.

4.4 If the Company fails to deliver the Goods (or any instalment thereof) or perform the Services for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods or Services to replace those not delivered or performance of the Price of the Goods or Services.

4.5 If the Buyer fails to take delivery of the Goods (otherwise than by reason of the Company's fault) or fails to give the Company adequate instructions for delivery then, without prejudice to any other right or remedy available to the Company, the Company may:

- 4.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 4.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under contract.

5. Risk

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery, or if the Buyer wrongfully fails to take delivery, the time when the Company had tendered delivery of the goods.

6. Price

6.1 The Price for the Goods and services shall be the price specified by the Company, and which unless otherwise stated shall be:

- 6.1.1 Exclusive of Value Added Tax (which the Buyer shall additionally be liable to pay to the Company); and
- 6.1.2 Calculated on an Ex-Works basis.

6.2 Where the Company is required to deliver the Goods on any basis other than Ex-Works, unless a specific fee or charge is agreed by the Buyer with the Company, the Company reserves the right to charge a reasonable fee to the Buyer for the cost of any carriage and/or other expenses incurred by the Company in relation to the delivery of the Goods ("Additional Charges").

6.3 The Price for the Machinery is exclusive of any additional safety precautions (over and above that supplied with the Machinery) which is either:

- 6.3.1 Required by the Buyer; or
- 6.3.2 Required by law or recommended by the Company as prudent in order to comply with the law.

6.4 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company.

7. Payment Terms

7.1 The Company shall be entitled to invoice the Buyer for the Price of the Goods and/or the Services on or at any time after the Company has received an order normally this is a 50% deposit payment on order placement and then the other 50% of delivery of the order:

7.2 The Buyer shall pay the Price of the Goods within 1 calendar days from the date of the Company's invoice.

7.3 In the event that the Buyer fails to make payment for any Goods and/or Services together with any Additional Charges by the due date, all invoices issued to the Buyer by the Company in respect of any Goods and/or Services sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Company to the Buyer in respect of the same shall be cancelled forthwith.

7.4 The Company shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Buyer. The time of payment of the Price shall be of the essence of the contract.

7.5 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company:

- 7.5.1 The Company shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above the Company's bankers base rate current from time to time; and
- 7.5.2 The Company shall be entitled to:-

- (i) withhold delivery of any Goods agreed to be sold by the Company to the Buyer or any instalment thereof; and
- (ii) suspend the performance of any Services or part thereof (being in either case the subject of the contract or any other contract) until payment in full is made.

7.5 Unless agreed otherwise in Writing, payment shall be made in GBP / USD or Euros, and payment received in any other currency will not be deemed payment in full, notwithstanding the fact that any such currency other than sterling may, at the Company's sole discretion, be accepted in part payment of the Goods and services.

8. Title

8.1 Notwithstanding the delivery of and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the Price of such Goods and all other Goods and Services agreed to be sold or provided by the Company to the Buyer for which payment is then due.

8.2 Until such time as title in any Goods delivered by the Company passes to the Buyer, the Buyer shall hold such Goods as the Company's fiduciary agent and bailee shall keep such Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use such Goods in the ordinary course of its business with the Company's written consent.

8.3 Until such time as title in any Goods which have been delivered by the Company passes to the Buyer (and provided such Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up such Goods to the Company and if the Buyer fail to do so forthwith, to enter upon any premises of the Buyer or any third party where such Goods are stored and mark identify the repossess such goods.

8.4 The Buyer shall be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. Warranties and Liability

9.1 Subject to the Conditions set out below the Company warrants that:

9.2 Kwikbolt Ltd offers no warranties for goods once delivered to the customer.

9.3 These conditions apply to all goods and equipment and include tooling.

10. Buyer's Warranties

10.1 The Buyer warrants that it shall not remove or modify any safety devices on the Machinery without the Company's prior written approval.

10.2 The Buyer warrants that the load bearing capacities of any floor, wall, ceiling or other structure on which the Machinery and the Company shall have no responsibility or liability in relation thereto.

10.3 The Buyer warrants that all facilities for the installation and operation of the Machinery such as electricity gas, water and compressed air shall promptly be made available to the Company upon request free of charge to enable the Company to install the Machinery in one continuous operation. The Buyer further warrants that where the Company is prevented from performing the Services due to any delay in the provision of the aforementioned facilities, the Buyer shall pay an additional reasonable sum to the Company to reflect the increased costs in performing the Services.

10.4 The Buyer warrants that the site at which the Services are to be performed by the Company and all equipment employed on it shall comply with all statutory or regulatory requirements relating to the health and safety of persons gaining entry to the site.

10.5 If for any reason when the Company attends the site to perform the Services, the site or equipment employed on it do not, in the Company's reasonable opinion, comply with the statutory and regulatory requirements referred to at clause 10.4 above, the Company at its option may:

10.5.1 Elect to carry out the Services but may charge the Buyer for any costs it incurs in preparing the site to satisfy such statutory and regulatory requirements; or

10.5.2 Elect to remain on site whilst the Buyer takes the necessary steps so that the site complies with the statutory and regulatory requirements. The Company shall charge for such waiting time at the rates specified in the quotation (or if none then its current rate) for waiting time; or

10.5.3 Elect to leave the site and return at some time in the future on a date to be agreed to the parties by which time the Buyer will ensure that the site complies with the statutory and regulatory requirements. The Company may charge for its wasted time in accordance with the rate specified in the quotation (or if none then its current rate) for wasted time.

10.6 Where the Company has submitted a quotation prior to site inspection, the Company reserves the right to withdraw from any such quotation or other responsibility if, in the Company's sole opinion, access to or the condition of the site is unsuitable or unsafe for the Services to be performed.

11. Intellectual Property Rights

11.1 Where any writing or other mark or design is applied to the Goods either at the Buyer's request or to the Buyer's specification, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any intellectual property rights of any person which results from the Company's use of the Buyers specification.

11.2 The Buyer acknowledges that any and all intellectual property rights (save those intellectual property rights referred to in clause 12.1 of these Conditions) subsisting in or used in connection with the Goods including all documentation, literature and manuals relating thereto, are and shall remain the property of the Company or such third party as the case may be and the Buyer shall have no property rights therein, unless the same shall be granted in writing by the Company or said third party.

12. Insolvency of Buyer

12.1 This clause applies if:

12.1.1 The Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

12.1.2 An encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer, or

12.1.3 The Buyer ceases or threatens to cease, to carry on business; or

12.1.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel all contracts between the Company and the Buyer and suspend any further deliveries or performance under all contracts without any liability to the Buyer, and if the Goods have been delivered or the Services have been performed but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. General

13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at his registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions shall remain in full force and effect.

13.3 No waiver by the Company of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4 The contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.

13.5 These Conditions constitute the entire contract between the parties and may be varied or modified in writing under the hands of the parties or their authorised representatives.

14. Fulfilment Policies

14.1 Kwikbolt has in place the following policies: -

14.1.1 Refund policy — Kwikbolt USA offer no refund policy but will work with customer to resolve any product problems.

14.1.2 Delivery policy — Kwikbolt USA quote as Ex works as standard

14.1.3 Return policy – Kwikbolt USA offer no returns policy but will work with customer to resolve any product problems

14.1.4 Cancellation policy — Kwikbolt USA offer no cancellation policy for any accepted PO.