

Terms and Conditions of Sale

1. Application and entire agreement

- 1.1 These **Terms and Conditions of Sale** will apply to the purchase of the goods detailed in our Order Confirmation (Goods) by the corporate entity, firm or person (Buyer) to which the Goods are supplied from Railway Wheelset & Brake Limited, a company registered in England and Wales under number 3148643, whose registered office is at 6 Spencer Green, Whiston, Rotherham, S60 4NR (Seller).
- 1.2 These **Terms and Conditions of Sale** will be deemed to have been accepted by the Buyer on receipt of our Seller's Order Confirmation (Order), or from the date of any delivery of the Goods, or on payment by the Buyer through Pro-forma invoice (whichever happens earlier) and will constitute the entire agreement between the Seller and the Buyer (the Parties).
- 1.3 These **Terms and Conditions of Sale** and the Order Confirmation and/or Pro-forma Invoice (together, the Contract) apply to the purchase and sale of any Goods between the Parties, to the exclusion of any other terms that the Seller tries to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless expressly agreed.

2. Interpretation

- 2.1 **Terms and Conditions of Sale** is the collective name for the Terms and Conditions contained within this document, which forms part of the Contract.
- 2.2 Condition means an obligation under these **Terms and Conditions of Sale** as the context so admits.
- 2.3 Term means a particular meaning to a word, phrase or expression used in this **Terms and Conditions of Sale** as the context so admits.
- 2.4 An Order Confirmation is a formal notice issued by the Seller to the Buyer, acknowledging the Buyer's order for the Goods.
- 2.5 A Pro-forma Invoice is issued to a Buyer who does not have credit terms with the Seller, or if the Goods Price exceeds credit terms, requesting payment for the Goods prior to delivery. A Pro-forma invoice takes the place of a Seller's Order Confirmation when pre-payment is requested.
- 2.6 Sales Documentation includes, but is not limited to, catalogues, website, case studies, general advice.
- 2.7 Drawing is a technical illustration of design, measurement and manufacturing specification.
- 2.8 A Manufacturer Certificate of Conformance is a paper certification with supporting testing records documentation which shows that Goods have been produced to the specifications on a drawing.

- 2.9 A business day means any day other than Saturday, Sunday or Bank Holiday in England and Wales.
- 2.10 The headings in these **Terms and Conditions of Sale** are for convenience only and will not affect their interpretation.
- 2.11 Words imparting the singular number include the plural and vice-versa.

3. Sales documentation and drawings

- 3.1 Whilst the Seller takes every precaution in the preparation of Sales Documentation, and the Buyer should observe the directions and recommendation contained within, these documents are for the Buyer's general guidance only and the particulars contained within shall not constitute representations by the Seller and the Seller shall not be bound by these.
- 3.2 Although the Seller may assist the Buyer to source a Drawing, it is the responsibility of the Buyer to ensure that any drawing being used to specify the Goods is correct and appropriate to the requirement for Goods.

4. Goods

- 4.1 The description of the Goods is set out in the Order. The specification of the Goods will be set out in a drawing (if available). In accepting the quotation, the Buyer acknowledges that they have not relied upon any statement, promise or other representation about the Goods by the Seller.
- 4.2 Where Goods are manufactured to a Buyer's requirement, then the Buyer accepts that the manufacturing and delivery lead times quoted by the Seller are approximate only and time is not of the essence of the Contract. The Seller will not be liable for any delay in delivery in the manufacture of Goods that is caused by a circumstance beyond our control.
- 4.3 Where Goods are supplied from stock, such supply is subject to the availability of stocks at the date of delivery.

5. Price

- 5.1 The price (Price) of the Goods is set out in our Seller's Order current at the date of the Buyer's order, or Pro-forma invoice, or such other Price as the Seller may agree in writing.
- 5.2 The quotation (including any non-standard Price negotiated in accordance with the Condition on Price (above) is valid for a period of 30 days only from the date shown in it unless expressly withdrawn by the Seller at an earlier time.
- 5.3 If the cost of the Goods increases due to any factor beyond the Seller's control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, the Seller can increase the Price prior to delivery. Any increase in the Price will only take place after the Seller has informed the Buyer.
- 5.4 The Price is inclusive of fees for packaging and delivery on a business day, unless the Seller's quotation, Order Confirmation or Pro-forma Invoice clearly states a separate fee for packaging and delivery.

5.5 The Price is exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

6. Cancellation and alternation

6.1 No cancellation by the Buyer is permitted, after issue of our Seller's Order Confirmation, except where agreed by the Seller.

6.2 The Buyer will, in the event of the Seller agreeing to cancellation by the Buyer, indemnify the Seller fully against all charges, costs and losses sustained, including a sum in respect of loss of profits.

6.3 The Seller may, without prejudice to their other rights, suspend or cancel further deliveries under any Order or Contract between the Parties if:

- the Buyer fails to make any payment owing by the date due on any invoice; and/or
- the Buyer is or becomes or, in our reasonable opinion, is about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
- the Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with their creditors; or
- the Buyer convenes any meeting of their creditors, enters into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of their assets or undertakings of any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by the Buyer or any of their directors or by a qualified floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or a petition presented to any court for the winding up of the Buyer's affairs or for the granting of an administration order, or any proceedings are commenced relating to the Buyer's insolvency or possible insolvency.

6.4 The Seller may refuse to accept an Order if the Buyer's credit limit with the Seller has been exceeded, or will be exceeded, on delivery of the Goods. In such a case the Seller may request payment by the Buyer through Pro-forma invoice and may cancel the Order if no such payment is made.

6.5 The Seller can terminate the sale of Goods under the Contract where the Buyer commits a material breach of their obligations under these **Terms and Conditions of Sale**.

7. Payment

7.1 The Seller will invoice the Buyer for the Price either:

- on or at any time after delivery of the Goods; or
- where the Goods are to be collected by the Buyer; or
- where the Buyer wrongfully does not take delivery of the Goods, at any time the Seller has notified the Buyer that the Goods are ready for collection; or

- the Seller has tried to deliver the Goods.
- 7.2 The Buyer must pay the Price within 30 days of the date of the Seller's invoice or otherwise according to any credit terms agreed between the Parties.
- 7.3 Title in the Goods does not pass to the Seller until payment is made in full.
- 7.4 If the Buyer does not pay within the period set out above, the Seller will suspend any further deliveries to the Buyer and without limiting any of the Seller's rights or remedies for statutory interest, charge the Buyer interest at the rate of 5% per annum above the base rate of the National Westminster (NatWest) Bank from time to time on the amount outstanding until the Buyer pays in full.
- 7.5 Time for payment will be of the essence of the Contract between the Parties.
- 7.6 All payments must be made in British Pounds unless otherwise agreed in writing between the Parties.
- 7.7 Both Parties must pay all amounts due under these **Terms and Conditions of Sale** in full without any deduction or withholding except as required by law and neither Party is entitled to assert any credit, set-off or counterclaim against the other Party in order to justify withholding payment of any such amount in whole or in part.

8. Delivery

- 8.1 The Seller will arrange for the delivery of the Goods to the address specified the Buyer's order or to another location the Parties agree in writing.
- 8.2 The delivery will be deemed to have been affected when the Goods are delivered to the Buyer at the address specified by the Buyer, prior to unloading. The Buyer is responsible for unloading the delivery vehicle. Any charges made by a transportation company for delays in unloading their vehicle, or unsuitable or blocked access to the Buyer's premises, will be passed on to the Buyer.
- 8.3 If the Buyer does not specify a delivery address, or if the Parties agree to the Buyer collecting the Goods, the Buyer must collect the Goods from the Seller's premises. When collecting Goods, the Buyer becomes responsible for the Goods upon commencement of loading of the Buyer's vehicle.
- 8.4 Subject to the specific terms of any special delivery service, delivery can take place and must be accepted at any time between 8am and 4pm.
- 8.5 If the Buyer does not take delivery of the Goods the Seller may, at the Seller's discretion, and without prejudice to any other rights:
- store or arrange for the storage of the Goods and will charge the Buyer for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and/or
 - plan for the redelivery of the Goods and will charge the Buyer for the costs of such redelivery; and/or
 - after 10 business days, resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below the Price of the Goods; and/or

- put the goods into the Seller's warehouse and invoice the Buyer for the Goods, upon payment of which the title of the Goods will pass to the Buyer and the Seller may, at their discretion, charge the Buyer for associated costs including, but not limited to, storage and insurance and subsequent delivery to the Buyer's premises. Subsequently, should notice of 30 days be given to the Buyer by the Seller the Buyer must collect the Goods, within 30 days, otherwise the title in the Goods transfers back to the Seller at no cost to the Seller.
- 8.6 If redelivery is not possible as set out above, the Buyer must collect the Goods from the Seller's premises and will be notified of this. The Seller can charge the Buyer for all associated costs including, but not limited to, storage, transportation and insurance.
- 8.7 Any dates quoted by the Seller for delivery are approximate only, and the time of delivery is not of the essence. The Seller will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond the Seller's control or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.8 The Seller can deliver the Goods by installments, which will be invoiced and paid for separately. Each installment is a separate Contract. Any delay in delivery of defect in an instalment will not entitle the Buyer to cancel any other installment.

9. Packaging

- 9.1 As applicable, packaging supplied for Goods will meet regulatory standards and it is the Buyer's responsibility on delivery to ensure packaging and corrosion protection is adequate for ongoing storage and transportation as per regulatory standards. Packaging for items not controlled by regulatory standards is intended for delivery to site and off loading only and is not designed for onward transportation and storage by the Buyer.
- 9.2 It is the Buyer's responsibility to dispose of all packaging in such a manner as meets legal and environmental standards. Any marking identifying the Seller and Goods must be removed or eradicated before passing to a disposal company or site.

10. Inspection and acceptance of Goods

- 10.1 The Buyer must inspect the Goods on delivery or collection.
- 10.2 Acceptance of the Goods will be deemed to be upon inspection of them by the Buyer and in any event within 5 business days after delivery or collection.
- 10.3 Unless otherwise specifically stated upon the Order, all tests, test Goods and inspections, whatever required by the Buyer, will be charged extra. All tests and inspections shall take place under the Seller's standard testing arrangements (if any and as appropriate) and such test shall be final.
- 10.4 If the Buyer identifies any damages or shortages, the Buyer must inform the Seller in writing within 5 business days of delivery, providing details.
- 10.5 Other than by agreement, the Seller will only accept returned Goods if they are satisfied that those Goods are defective and, if required, have carried out an inspection. The Seller will collect Goods deemed to be defective and will, as appropriate, repair, or replace, or refund the Goods or part of them at their cost.

- 10.6 Subject to inspection, the Seller will make good any shortage in Goods and replace any Goods damaged in transit as soon as the Seller is reasonably able to do so, but otherwise shall be under no liability whatsoever arising from such shortages or damage.
- 10.7 The Seller will be under no liability or further obligation in relation to the Goods if:
- the Buyer fails to provide notice as set above, and/or
 - the Buyer makes any further use of such Goods after giving notice under the Condition above relating to damages and shortages; and/or
 - the defect arises because the Buyer did not follow our oral or written instructions about the storage, commissioning, installation, use and maintenance of the Goods, and/or
 - the defect arises from normal wear and tear of the Goods, and/or
 - the defect arises from misuse or alternation of the Goods, negligence, wilful damage or any other act by the Buyer, the Buyer's employees or agents or any third parties.

11. Risk and title

- 11.1 The risk in the Goods will pass to the Buyer on completion of delivery, prior to unloading.
- 11.2 Title to the Goods will not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- the Goods; and/or
 - other goods or services,
- that the Seller has supplied to the Buyer in respect of which payment has become due.
- 11.3 Until title to the Goods has passed to the Buyer, the Buyer must:
- hold the Goods on a fiduciary basis as our Bailee; and/or
 - store the Goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and/or
 - keep the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery.
- 11.4 Should payment of the Price by the Buyer become overdue, as long as the Goods have not been resold, or incorporated into another product, component or vehicle and without limiting any other right or remedy the Seller may have, the Seller can at any time ask the Buyer to return the Goods at the Buyer's cost and, if failure to do so promptly, enter any of your premises and of any third party where the Goods are stored in order to recover them.
- 11.5 The Buyer's power of sale and use shall automatically cease if the Buyer has:

- the Buyer is or becomes or, in our reasonable opinion, is about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
- the Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with their creditors; or
- the Buyer convenes any meeting of their creditors, enters into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of their assets or undertakings of any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by the Buyer or any of their directors or by a qualified floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or a petition presented to any court for the winding up of the Buyer's affairs or for the granting of an administration order, or any proceedings are commenced relating to the Buyer's insolvency or possible insolvency.

11.6 Should the Buyer change ownership the title in the Goods only transfers to the new owner if the Price for the Goods has been paid to the Seller by the Buyer or the new owner of the Buyer.

12. Warranty

- 12.1 No representational warranty is given as to the suitability or fitness of the Goods for any particular purpose and the Buyer shall seek satisfaction in this respect and be totally responsible.
- 12.2 The Buyer expressly acknowledges that for all purposes the ability and expertise of the Buyer in a use of the Goods and evaluating any description of or information regarding the Goods is equal to that of the Seller and the Buyer has not relied on the skill and judgement of the Seller.
- 12.3 The Seller undertakes no responsibility for the suitability of the Goods or for any compliance with any statutory regulation with regards to the Goods, or the fulfilment of any special requirements that which the Buyer may be bound to observe or fulfil.
- 12.4 If so requested by the Buyer in their order, and produced as standard practice by the manufacturer, the Seller warrants to provide a Manufacturer Certificate of Conformance for the Goods.

13. Limitation of liability

- 13.1 The Seller's liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this section of the **Terms and Conditions of Sale**, headed **Limitation of liability**.
- 13.2 The Seller will guarantee Goods with these conditions:
- only defects caused by manufacture error, materials or workmanship found within 12 months of delivery are subject to guarantee;
 - defects caused by abnormal use, misuse or neglect will not be guaranteed;

- the Buyer must inform the Seller of the relevant defect in writing within 5 business days of the date the Seller discovered the defect and provide the Seller with reasonable opportunity for access to and inspection of the Goods.
 - in the case of Goods not of the Seller's manufacture, the Buyer is entitled only to the benefit of any guarantee or warranty provided to the Seller by the manufacturer and the Seller's liability will not exceed the amount recovered by the Seller from the manufacturer concerned.
 - in consideration for receiving the benefit of a guarantee, the Buyer agrees that, apart from the terms set out in the conditions under **Inspection and acceptance of Goods** and **Warranty**, no other terms, whether express or implied, statutory or otherwise, shall form part of the guarantee except to the extent that such exclusion is prohibited by law.
- 13.3 After the consideration of the above conditions, the Seller agrees to, if the Seller accepts that the Goods are defective, or not in accordance with the Contract, to either replace the Goods, or if the Seller chooses to do so, repair the Goods at the Seller's expense.
- 13.4 Subject to the Conditions above on the **Inspection and acceptance of Goods** and **Risk and title**, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
- 13.5 The Seller shall not be liable for consequential or indirect loss suffered by the Buyer whether this loss arises from breach of duty in contract or tort or in any other way (including from loss arising from the Seller's negligence).
- 13.6 The Seller's total liability will not, in any circumstances, exceed the total amount of the Price payable by the Buyer.
- 13.7 The Seller will not be liable (whether caused by the Seller's employees, agents or otherwise) in connection with the Goods, for:
- any indirect, special or consequential loss, damage, costs, or expenses; and/or
 - any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third-party claims; and/or
 - any failure to perform any of our obligations if such a delay or failure is due to any Condition beyond our reasonable control; and/or
 - any losses caused directly or indirectly by any failure or breach by the Buyer in relation to the Buyer's obligations; and/or
 - any loss relating to the choice of Goods and how they will meet the Buyer's purpose or the use of the Goods supplied.
- 13.8 The exclusion of liability contained within these **Limitation of liability** conditions will not exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence; or for any matter for which it would be illegal for the Seller to exclude or limit liability; and for fraud or fraudulent misrepresentation.

14. Communications

- 14.1 All notices under these **Terms and Conditions of Sale** must be in writing and signed by the Party giving notice (or a duly authorised officer of that Party).
- 14.2 Notices will be deemed to have been duly given:
- when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;
 - when sent, if transmitted by email and a successful transmission return receipt is generated;
 - on the 5th business day after mailing if mailed by national ordinary mail; or
 - on the 10th business day following mailing, if mailing by airmail.
- 14.3 All notices under these **Terms and Conditions of Sale** must be addressed to the most recent address or email address notified by the other Party.
- 14.4 All notices under these **Terms and Conditions of Sale** must be written in English only.

15. Agents

- 15.1 The term “Agents” applied to persons or companies within the United Kingdom or elsewhere, with whom the Company has planned for the sale of Goods is a nominal term and indicates only that they are a local representative appointed only for the convenience of Buyers. Agents are not authorised by the Seller to incur any liability, give a guarantee or warranty, make any representations or transact any business whatsoever on behalf of the Seller other than offering the Seller’s Goods upon the conditions of these **Terms and Conditions of Sale**.

16. Data protection

- 16.1 When providing the Goods to the Buyer, the Seller may gain access to and/or acquire the ability to transfer, store, or process personal data of the Buyer or their employees.
- 16.2 The parties agree that where such processing of personal data takes place, the Buyer shall be ‘data controller’ and the Seller shall be the ‘data processor’ as defined in the General Data Protection Regulation (GDPR) EU2016/679 as may be amended, extended and/or re-enacted from time to time.
- 16.3 For the avoidance of doubt, ‘Personal Data’, ‘Processing’, ‘Data Controller’, ‘Data Processor’ and ‘Data Subject’ shall have the same meaning as in the GDPR.
- 16.4 The Seller shall only Process Personal Data to the extent reasonably required to enable them to provide the Goods as mentioned in these **Terms and Conditions of Sale**, or as requested by and agreed with the Buyer, and shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party’s purposes.
- 16.5 The Seller shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Seller on behalf of the Buyer. Further information about the Seller’s approach to Data Protection

Policy can be found on the Seller' website. For any enquiries or complaints regarding data privacy, the Buyer can contact the Seller's business office manager at the following e-mail address: sales@railwaywheelet.co.uk.

17. Circumstances beyond the control of either Party

- 17.1 Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party, a **Force Majeure** event. Such causes include, but are not limited to; power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, delays by suppliers, failure of a supplier, shortages of materials, labour or manufacturing facilities, or any other event that is beyond the control of the Party in question.
- 17.2 If the circumstances preventing delivery are still continuing 3 months after the Force Majeure event has arisen then either Party may give written notice to the other Party cancelling the Contract and neither Party shall be under any further liability to the other, except that the Buyer shall be liable to pay the Price less a reasonable allowance for what has not been performed by the Seller.

18. No waiver

- 18.1 No waiver by the Seller of any breach of these **Terms and Conditions of Sale** by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other Condition.

19. Severance

- 19.1 If one or more of these **Terms and Conditions of Sale** is found unlawful, invalid or otherwise unenforceable, that/those Conditions shall be deemed severed from the remainder of these **Terms and Conditions of Sale** (which will remain valid and enforceable).

20. Contracts for delivery outside of the United Kingdom

- 20.1 Commercial terms of any contract made under these **Terms and Conditions of Sale** shall be in accordance with INCOTERMS 2010, except as varied by these conditions.
- 20.2 Unless otherwise agreed in writing by the Seller, payment shall be made in cash in British Pounds in exchange for shipping documents through an irrevocable letter of credit issued in the name of the Seller, payable in London, and confirmed by a United Kingdom bank, or alternatively, payment shall be made by means of a confirmed banker's credit payable in London, the credit being confirmed by a United Kingdom Bank.
- 20.3 When payment is made in a currency other than British Pounds the Price shall be varied in accordance with any variation of the rate of exchange of such currency at the date of payment to give the equivalent value of the Order in British Pounds, calculated from the exchange rate in force at the date of the Order.
- 20.4 The Seller shall be responsible for obtaining any necessary United Kingdom export license. The Buyer will be responsible for obtaining all licences which they may require to import and use the Goods and the Buyer shall not be discharged from their obligations hereunder by any total or partial prohibition of imports or by the refusal or

non-availability of any import licence or by the imposition of any conditions or restrictions upon the grant of such a licence.

- 20.5 In the event of the Buyer failing to obtain the necessary licences on or prior to the date of despatch of the Goods by the Seller, the Seller shall be entitled, without prejudice to their other rights, to place the Goods in storage at the Buyer's risk and expense.
- 20.6 In the event of the law of a particular country or territory rendering the provisions of **Law and jurisdiction** invalid any dispute of difference arising under or in relation to the Contract may, on either Party giving to the other notice of the existence of such dispute or difference, be referred to arbitration by a single arbitrator agreed upon by the Parties, or failing agreement appointed by the President of the International Chamber of Commerce under the rules of Conciliation and Arbitration.

21. Law and jurisdiction

- 21.1 Any Contract shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Contract (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.

22. Effective date

- 22.1 These **Terms and Conditions of Sale** are issued by the Seller on 9 October 2018 and become effective as a Contract between the Parties when combined with a Seller's Order Confirmation and/or Seller's Pro-forma Invoice.

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