

# CONDITIONS OF SALE

## 1. Definitions

In these Conditions of Sale

"the Seller" means **T. Crossling & Co. Limited**  
**or**  
**Crossling Limited**  
**or**  
**Crossling CBM Limited**  
**or**  
**Northern Tools & Accessories**

"Order" means any order placed by the Buyer;

"Quotation" means any quotation or terms given by the Seller. All such quotations or terms shall be deemed to incorporate these Conditions which shall be deemed to have been accepted by the Buyer as governing all agreements from time to time entered into between the Seller and the Buyer which provides for the sale of any goods by the Seller to the Buyer and the performance of any services by the Seller for the Buyer;

"the Buyer" means the person firm or company named as the Buyer in an Order;

"the Goods" means the goods which are the subject of an Order;

"the Services" means any services which are the subject of an Order; and

"the Agreement for Sale" means the agreements, warranties, conditions, representations and other terms set out in these conditions.

## 2. The Agreement

These Conditions shall be deemed to be incorporated in all agreements from time to time entered into between the Seller and the Buyer which provide for the sale of any goods and the performance of any services by the Seller to the Buyer. Acceptance of the Goods by the Buyer shall be conclusive evidence before any court of law or arbitrator that these conditions apply.

The Agreement for Sale represents the complete agreement between the Seller and the Buyer with regard to the Goods and Services and contains all agreements, warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the Goods and Services. No amendment or addition to the Agreement for Sale shall be binding on the Seller unless agreed in writing by the Seller.

The Seller's catalogues, price lists and quotations do not constitute offers made by the Seller and consequently any Order of the Buyer shall constitute an offer only and shall be subject to acceptance by the Seller. No offer, obligation or agreement relating to the sale of Goods and Services is binding on the Seller unless set out in the Agreement for Sale or an amendment or addition thereto duly agreed in writing by the Seller.

Every Order must specify its date, a reference and, where applicable, an address for delivery.

## 3. Prices

The prices for the Goods and Services exclusive of V.A.T. shall be as given in the Quotation, except as otherwise provided for herein.

The Seller reserves the right to increase the price of the Goods and Services if on or before the despatch date there is either any increase in the Seller's general price list in respect of the same or similar descriptions of Goods or any increase in the Seller's costs of new materials, labour or services or any currency fluctuations affecting the cost of the Goods.

The Seller reserves the right to make additional charges in respect of:-  
(a) the costs of carriage, storage, insurance or other charges or  
(b) any other matter incurred by the Seller in accordance with the Buyer's Order or otherwise at the Buyer's direction.

## 4. Payment Terms

Except as otherwise specified in the Quotation or this Condition payment for the Goods and Services shall be due in full in pounds sterling at the latest within thirty days of the end of the month in which the Goods are delivered or collected.

Time for payment shall be of the essence.

In the event of any payments becoming overdue the Seller shall be entitled to charge interest at the rate of two and a half per cent per annum above the base rate from time to time of Lloyds Bank Plc accruing daily.

In the event of any payments not being made when due or if the Seller at its discretion at any time considers the financial circumstances of the Buyer have ceased to justify the terms allowed, the Seller reserves the right to suspend further work and deliveries to cancel allowance of further credit to demand security for payment before continuing work on or delivering any Goods or performing any Services and to appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit notwithstanding any purported appropriation by the Buyer.

Until payments due from the Buyer to the Seller for the Goods and Services are made, the Seller shall have a general lien in respect of all property of the Buyer in the Seller's possession.

The Buyer shall not be entitled to withhold payment from the Seller in respect of any sums for any Goods or Services for which payment shall be due notwithstanding any claims (howsoever and whensoever arising) by the Buyer against the Seller.

## 5. Delivery and Risk

5.1 Signature by the Buyer or the Buyer's representative or the Seller's delivery documentation shall constitute delivery thereof to the Buyer, and thereafter, such Goods shall be at the Buyer's risk.

5.2 Any period or date for delivery stated in the Agreement for Sale or elsewhere is the Seller's estimate when stated but is not a contractual commitment. Time for delivery shall not be of the essence.

5.3 The Seller may make delivery by instalments. Goods included in each delivery or part delivery shall be deemed to be sold under a separate contract. Neither failure on the Seller's part to make any delivery or part delivery in accordance with the Agreement for Sale nor any claim by the Buyer in respect of such delivery or part delivery shall entitle the Buyer to reject the balance of the Goods agreed to be purchased by the Buyer. For the avoidance of doubt no cancellation of an Order or part of an Order shall be permitted for whatever reason without the express written consent of a duly authorised representative of the Seller.

5.4 The Seller reserves the right to despatch and bill for a quantity of Goods reasonably greater or reasonably less than the exact quantity.

5.5 In respect of sales in which delivery is made by the Seller or the Seller's carrier the Seller shall repair or replace free of charge any Goods proved to the Seller's satisfaction to have been lost or damaged in transit provided that both the Seller and the Seller's carrier (if any) receive written notification of damage within three working days of delivery or of loss in transit within five working days from date of despatch. After such period, the Seller shall not be liable in respect of any such loss or damage.

5.6 Goods may not be returned without the Seller's written agreement. Goods so returned must be consigned carriage paid by the Buyer and accompanied by a packing note stating the Seller's delivery note number. In some instances a re-stocking charge may be made to the Buyer. Any further terms to which the return of the Goods shall be subject shall be within the absolute discretion of the Seller.

## 6. Passing of Property

6.1 The Buyer acknowledges that before entering into the agreement for sale he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the company or apply for the appointment of an administrator or exercise any other rights over or against the company's assets.

6.2 The Agreement for Sale shall constitute an agreement to sell the Goods and not a sale of them and no title to the Goods shall pass to the Buyer by reason of delivery or acceptance of the same.

6.3 The Seller shall remain the sole and absolute owner of the Goods until such time as the agreed price of the Goods and all other monies due or owing from the Buyer to the Seller have been paid to the Seller by the Buyer and until such time the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored and identified as the Seller's property. Provided always that in accordance with clause 5 the Goods shall be at the risk of the Buyer as soon as they are delivered by the Seller in accordance with clause 5. In any case where the Goods are delivered by instalments, the provisions of this clause 6 shall apply separately to each separate delivery of the Goods.

6.4 The Buyer's right to possession of the Goods shall cease at whichever is the earliest of the following dates;

6.4.1 on the expiration of the agreed period of credit, if any

6.4.2 if he, not being a company, commits an act of bankruptcy, makes a proposal to his creditors for a composition under section 253 of the Insolvency Act 1986 or does anything which would entitle a petition for a bankruptcy order to be made or, in the case of a foreign person does or suffers some act which renders him liable to similar proceedings

6.4.3 if the Buyer being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up or apply for an administration order or, in the case of a foreign company does or suffers some act which renders him liable to similar proceedings

6.4.4 if the Buyer, being a company, or any director thereof shall apply to the court under section 9 of the Insolvency Act 1986 for the appointment of an administrator

6.5 The Seller may recover from the Buyer at any time those Goods still in the Buyer's possession if any of the circumstances set out in clause 6.4 occurs, and for the purpose of such recovery the Seller, its agents or servants may enter upon any land or buildings upon which it is reasonably believed that the Goods are situated.

## 7. Warranty

7.1 The Seller warrants that it has title to and the unencumbered right to sell the Goods.

7.2 No representation or warranty is given as to the suitability or fitness of the Goods for any or any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible therefor.

7.3 If the Goods are in such a state as would but for this condition entitle the Buyer to repudiate the contract and/or claim damages from the Seller the Seller reserves the right (after inspection of any such Goods) to repair or replace the same provided that the Seller shall have no obligation to replace any Goods where any attempt has been made by the Buyer or any third party to remedy any defect in the Goods.

## 8. Liability

### 8.1 Introduction

8.1.1 Nothing in Clause 8 shall be deemed to exclude or restrict the Seller's liability for death or personal injury resulting from negligence.

8.1.2 Each of the subclauses in 8 is to be treated as separate and independent.

8.2 The Buyer agrees that no terms, whether conditions, warranties or innominate terms, express or implied, statutory or otherwise, shall form part of this contract except where the Buyer deals as consumer within section 12 of the Unfair Contract Terms Act 1977 when the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 (and in respect of Services the equivalent provisions under the Sale of Goods and Services Act 1982) shall be implied into the contract.

8.3 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contracts, damage to property of the Buyer or anyone else, and personal injury (including death) to the Buyer or anyone else (except so far as such injury is attributable to the Seller's negligence).

8.4 The Seller's total liability for any one claim or for the total of all claims arising from any one act or default of the Seller (whether arising from the Seller's negligence or otherwise) shall not exceed the contract price.

### 9. Insurance

The Buyer agrees that it is best able to estimate the extent and nature of the insurance cover suitable for its business and property from time to time and can effect at more economic rates than the Seller appropriate insurance cover for its business and property including cover against loss damage costs claims and expenses referred to in Conditions 8.3 or 10 and the Buyer therefore acknowledges that it is reasonable for the Seller to sell the Goods and the Services and fix the purchase price on the basis of the exclusions and limitations of liability and the indemnity set out in these Conditions and the Buyer agrees that it will be responsible for effecting insurance cover as above mentioned as may be appropriate to its business and property including (but not limited to) any required insurance cover in respect of any loss or damage of whatsoever kind or howsoever caused whether by reason of the negligence of the Seller or otherwise to premises, plant or other physical property and the Seller shall have no legal liability in respect of any such loss or damage.

### 10. Indemnity – Third Party Claims

The Buyer agrees to indemnify the Seller against any loss, damage, costs, claims or expenses incurred by the Seller in respect of any legal liability established against the Seller by a third party arising out of or in connection with any of the Goods or Services supplied by the Seller and to procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

### 11. Force Majeure

11.1 The Seller shall not be liable for any failure to deliver the Goods or perform the Services arising from circumstances outside the Seller's control.

11.2 Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulations (U.K. or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

### 12. Notice

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at P.O. Box 5, Coast Road, Newcastle upon Tyne, NE6 5TP, or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.

### 13. Assignment

The Buyer shall not assign or otherwise transfer or purport to so assign or transfer all or any of its rights, interests or obligations under the Agreement for Sale without the prior written consent of the Seller.

### 14. Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.

### 15. English Law and Jurisdiction

The formation, construction and performance of the Agreement for Sale shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the jurisdiction of the High Court of Justice of England.

### 16. Headings

The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.

### 17. Severability

Each of the clauses and subclauses contained in this Agreement for Sale shall be construed as independent of every other clause and subclause and in the event of any clause or subclause being determined by any Court of Law as being unenforceable then such determination shall not affect the applicability of any other clause or subclause and the unaffected provisions of this Agreement for Sale shall remain in full force and effect.