

IMAGE WHEELS INTERNATIONAL LIMITED

Terms & Conditions
2008

The buyer's attention is in particular drawn to the provisions of condition 10.4.

1. Interpretation
 - 1.1. The definitions and rules of interpretation in this condition apply in these conditions.
Buyer: the person, firm or company who purchases the Goods from Image Wheels.
Contract: any contract between Image Wheels and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
Delivery Point: the place where delivery of the Goods is to take place under condition 4.
Goods: any goods agreed in the Contract to be supplied to the Buyer by Image Wheels (including any part or parts of them).
Image Wheels: Image Wheels International Limited (Company No. 02296565), the registered office of which is at Unit 3 Fountain Lane Industrial Estate, Fountain Lane, Tipton, West Midlands, DY4 9HA.
 - 1.2. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
 - 1.3. Words in the singular include the plural and in the plural include the singular.
 - 1.4. A reference to one gender includes a reference to the other gender.
 - 1.5. Condition headings do not affect the interpretation of these conditions.
2. **Application of terms**
 - 2.1. Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
 - 2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
 - 2.3. These conditions apply to all Image Wheels' sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of Image Wheels. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Image Wheels which is not set out in the Contract. Nothing in this condition shall exclude or limit Image Wheels' liability for fraudulent misrepresentation.
 - 2.4. Each order or acceptance of a quotation for Goods by the Buyer from Image Wheels shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
 - 2.5. No order which has been accepted by Image Wheels may be cancelled by the Buyer except with the agreement in writing of Image Wheels and on terms that the Buyer shall indemnify Image Wheels in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or un-used), damages, charges and expenses incurred by Image Wheels as a result of cancellation.
 - 2.6. The Buyer shall be responsible to Image Wheels for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Image Wheels any necessary information relating to the Goods within a sufficient time to enable Image Wheels to perform the Contract in accordance with its terms.
 - 2.7. No order placed by the Buyer shall be deemed to be accepted by Image Wheels until a written acceptance of order is issued by Image Wheels or (if earlier) Image Wheels delivers the Goods to the Buyer.
 - 2.8. Any quotation is given on the basis that no Contract shall come into existence until Image Wheels despatches an acceptance of order to the Buyer or (if earlier) Image Wheels delivers Goods to the Buyers. Any quotation is valid for a period of 30 days only from its date, provided that Image Wheels has not previously withdrawn it.
 3. **Description**
 - 3.1. The quantity, quality and description of and any specification for the Goods shall be those set out in the Image Wheels quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Image Wheels).
 - 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by Image Wheels and any descriptions or illustrations contained in Image Wheels' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
 - 3.3. Image Wheels reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to Image Wheels' specification, which do not materially affect their quality or performance.
 4. **Delivery**
 - 4.1. Unless otherwise agreed in writing by Image Wheels, delivery of the Goods shall take place at Image Wheels' place of business.
 - 4.2. The Buyer shall take delivery of the Goods within 14 days of Image Wheels giving it notice that the Goods are ready for delivery.
 - 4.3. Any dates specified by Image Wheels for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
 - 4.4. Subject to the other provisions of these conditions Image Wheels shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Image Wheels' negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 120 days.
 - 4.5. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Image Wheels is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Image Wheels' negligence);
 - b) the Goods shall be deemed to have been delivered; and
 - c) Image Wheels may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
 5. **Non-delivery**
 - 5.1. The quantity of any consignment of Goods as recorded by Image Wheels on despatch from Image Wheels' place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
 - 5.2. Image Wheels shall not be liable for any non-delivery of Goods (even if caused by Image Wheels' negligence) unless the Buyer gives written notice to Image Wheels of the non-delivery within two days of the date when the Goods would in the ordinary course of events have been received.
 - 5.3. Any liability of Image Wheels for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
 6. **Risk/title**
 - 6.1. The Goods are at the risk of the Buyer from the time of delivery.
 - 6.2. Ownership of the Goods shall not pass to the Buyer until Image Wheels has received in full (in cash or cleared funds) all sums due to it in respect of:
 - a) the Goods; and
 - b) all other sums which are or which become due to Image Wheels from the Buyer on any account.
 - 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - a) hold the Goods on a fiduciary basis as Image Wheels' bailee;
 - b) store the Goods (at no cost to Image Wheels) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Image Wheels' property;
 - c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - d) maintain the Goods in satisfactory condition and keep them insured on Image Wheels' behalf for their full price against all risks to the reasonable satisfaction of Image Wheels. On request the Buyer shall produce the policy of insurance to Image Wheels.
 - 6.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - b) any such sale shall be a sale of Image Wheels' property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
 - 6.5. The Buyer's right to possession of the Goods shall terminate immediately if:
 - a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a solvent of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Image Wheels and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - c) the Buyer encumbers or in any way charges any of the Goods.
 - 6.6. Image Wheels shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Image Wheels.
 - 6.7. The Buyer grants Image Wheels, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
 - 6.8. Where Image Wheels is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by Image Wheels to the Buyer in the order in which they were invoiced to the Buyer.
 - 6.9. On termination of the Contract, howsoever caused, Image Wheels' (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
 7. **Price**
 - 7.1. Unless otherwise agreed by Image Wheels in writing, the price for the Goods shall be the price set out in Image Wheels' price list published on the date of delivery or deemed delivery.
 - 7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8. **Payment**
 - 8.1. Subject to conditions 8.5 and 8.2, or as otherwise agreed in writing by Image Wheels, the price shall be paid in full on placing the order and in any event, before delivery of the Goods.
 - 8.2. Image Wheels may, at its sole discretion, open an account for the Buyer. Where Image Wheels has agreed to open an account for the Buyer, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.
 - 8.3. Time for payment shall be of the essence.
 - 8.4. No payment shall be deemed to have been received until Image Wheels has received cleared funds.
 - 8.5. All payments payable to Image Wheels under the Contract shall become due immediately on its termination despite any other provision.
 - 8.6. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Image Wheels to the Buyer.
 - 8.7. If the Buyer fails to pay Image Wheels any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to Image Wheels on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Natwest Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. Image Wheels reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
9. **Quality**
 - 9.1. Where Image Wheels is not the manufacturer of the Goods, Image Wheels shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to Image Wheels.
 - 9.2. Image Wheels warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:
 - a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - b) be free from defects in materials and workmanship.
 - 9.3. Image Wheels warrants that (subject to the other provisions of these conditions):
 - a) paint finishes will be free from defects in materials and workmanship on delivery and for a period of two years from the date of delivery; and
 - b) ceramic coat or anodized finishes (but not polished finishes) will be free from defects in materials and workmanship on delivery and for a period of 12 months following delivery.
 - 9.4. Image Wheels shall not be liable for a breach of any of the warranties in condition 9.2 or 9.3 unless:
 - a) the Buyer gives written notice of the defect to Image Wheels, and, if the defect is as a result of damage in transit to the carrier, within two days of the date of delivery; and
 - b) Image Wheels is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if asked to do so by Image Wheels) returns such Goods to Image Wheels' place of business at the Buyer's cost for the examination to take place there.
 - 9.5. Image Wheels shall not be liable for a breach of any of the warranties in conditions 9.2 or 9.3 if:
 - a) the Buyer makes any further use of such Goods after giving such notice; or
 - b) the defect arises because the Buyer failed to follow Image Wheels' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - c) the Buyer alters or repairs such Goods without the written consent of Image Wheels; or
 - d) the defect arises as a result of racing applications; or
 - e) the Buyer assigns or purports to assign the benefit of any of the warranties in conditions 9.2 or 9.3 to any other party; or
 - f) (except in the case of a resale to which condition 6.4 applies), the Buyer sells or otherwise parts with possession of the Goods.
 - 9.6. Subject to condition 9.4 and condition 9.5, if any of the Goods do not conform with any of the warranties in condition 9.2 or condition 9.3 Image Wheels shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Image Wheels so requests, the Buyer shall, at the Image Wheels' expense, return the Goods or the part of such Goods which is defective to Image Wheels. If Goods have been returned at the Buyer's cost pursuant to condition 9.4 and such Goods are subsequently found not to conform with any of the warranties in conditions 9.2 or 9.3, then subject to conditions 9.4 and 9.5, Image Wheels shall upon receipt of a relevant sales vouchers or receipt, refund to the Buyer, the reasonable transport costs incurred by the Buyer.
 - 9.7. If Image Wheels complies with condition 9.6 it shall have no further liability for a breach of any of the warranties in conditions 9.2 or 9.3 in respect of such Goods.
 - 9.8. Any Goods replaced shall belong to Image Wheels and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the relevant warranty periods set out in conditions 9.2 and 9.3.
10. **Limitation of liability**
 - 10.1. Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of Image Wheels (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - a) any breach of these conditions;
 - b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
 - 10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
 - 10.3. Nothing in these conditions excludes or limits the liability of Image Wheels:
 - a) for death or personal injury caused by Image Wheels' negligence; or
 - b) under section 2(3), Consumer Protection Act 1987; or
 - c) for any matter which it would be illegal for Image Wheels to exclude or attempt to exclude its liability; or
 - d) for fraud or fraudulent misrepresentation.
 - 10.4. **Subject to condition 10.2 and condition 10.3:**
 - a) **Image Wheels' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and**
 - b) **Image Wheels shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.**
11. **Assignment**
 - 11.1. Image Wheels may assign the Contract or any part of it to any person, firm or company.
 - 11.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Image Wheels.
12. **Force majeure**
 - 12.1. Image Wheels reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Image Wheels including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to Image Wheels to terminate the Contract.
13. **General**
 - 13.1. Each right or remedy of Image Wheels under the Contract is without prejudice to any other right or remedy of Image Wheels whether under the Contract or not.
 - 13.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
 - 13.3. Failure or delay by Image Wheels in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
 - 13.4. Any waiver by Image Wheels of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
 - 13.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
 - 13.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
14. **Communications**
 - 14.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
 - a) (in case of communications to Image Wheels) to its registered office or such changed address as shall be notified to the Buyer by Image Wheels; or
 - b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to Image Wheels by the Buyer.
 - 14.2. Communications shall be deemed to have been received:
 - a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - b) if delivered by hand, on the day of delivery; or
 - c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
 - 14.3. Communications addressed to Image Wheels shall be marked for the attention of J Nicklin.