

**STANDARD TERMS AND CONDITIONS OF SALE  
RGK WHEELCHAIRS  
AS FROM 1<sup>ST</sup> JANUARY 2000**

These conditions do not affect the Customer's statutory rights.

**1. DEFINITIONS**

In these conditions of sale:-

"The Supplier"	means RGK Wheelchairs
"Conditions"	means these terms and conditions.
"Goods"	means the goods and/or services that are the subject of the Order.
"Order"	means the order or offer to purchase from the Buyer accepted by RGK Wheelchairs.
"Price"	means the price payable in accordance with clause 3 hereof.
"Buyer"	means the party placing the Order.

**2. GENERAL**

- 2.1** Unless expressly stated to the contrary by the Company in writing their Conditions shall be deemed to be incorporated into any contract between the Company and the Buyer and shall be deemed to override any terms or conditions which are inconsistent with them which the Buyer may attempt to introduce.
- 2.2** Unless otherwise agreed in writing by the Company these Conditions Supersede any earlier sets of conditions of sale appearing on the Company's price list, quotation forms, invoices or on any other document whatsoever.
- 2.3** All quotations and contracts are made and Orders are accepted subject to these conditions of Sales. All other conditions are hereby excluded unless expressly accepted in writing by The Company.
- 2.4** In entering into a contract with the Company, the Buyer acknowledges That the contract has not been induced by any representatives orally or in writing made by the sellers, their servants or agents.
- 2.5** No quotation, estimate or tender given or made by the Company shall form an offer capable of acceptance by the Buyer. A binding contract for sale shall only be created upon the acceptance in writing by the Company of the Buyer's Order.

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

**2.7** If any of the provisions of these terms and conditions are held by any Court or other competent authority to be void or unenforceable in whole or in part, the other provisions of the terms and conditions and the remainder of the affected provisions shall continue to be valid.

### **3. PRICES**

**3.1** All prices are quoted at list price exclusive of V.A.T, unless otherwise agreed in writing.

**3.2** Unless stated otherwise, all prices are ex works.

**3.3** Firm price quotations are valid for a period of thirty days only from the date of quotation. The Company may at its absolute discretion, accept or reject any Order placed by the Buyer.

**3.4** In the event of any alteration to any Order being requested by the Buyer and agreed to by the Company, the Company shall be entitled to make an adjustment to the contract price, fairly reflecting such alteration or addition.

### **4. CONDITIONS AND WARRANTIES**

**4.1** Where samples of Goods or colour charts are provided, these are submitted only as indicative of the class, size or colour of Goods quoted for, and sales of Goods shall not be by reference to any such samples or colour.

**4.2** Whilst all descriptions and illustrations of the Goods in (Inter alla) Catalogues, brochures and price lists provided by the Company have been carefully prepared, they are intended nevertheless for general guidance only and do not form part of any contract for sale of Goods, and no responsibility is accepted for any errors or omissions therein or for any loss or damage resulting from reliance on such descriptions and illustrations.

**4.3** All conditions, warranties, terms and obligations, whether expressed or implied by statute, common law, custom or otherwise (including without prejudice to the generality of the foregoing, any warranty or condition as to the satisfactory quality or fitness for any particular purpose of the Goods) are excluded to the fullest effect permitted by law.

- 4.4** If the Buyer detects a defect in the goods or part thereof, the Buyer Will either return those Goods to the Company, or if the Goods are retained by the Buyer, indemnify and keep the Company indemnified against all liability and claims which may arise out of or incidental to the defect.
- 4.5** In the event of a defect in the Goods becoming apparent within 12 Months of the delivery date, the Company shall repair or replace parts free of charge subject to the remaining provisions of this condition 4. Any part so repaired or replaced during the 12 month warranty period is warranted for the remainder of the period. Parts replaced after the original warranty period has expired are covered for three months only.
- 4.6** Items of a consumable nature will not be covered during the warranty Period unless such items have suffered undue wear as a direct result of a manufacturing defect.  
Such items include amongst others, lubricants, tyres, inner tubes, brakes and similar parts.
- 4.7** This warranty shall not apply where any defect or malfunction has in In the Company's opinion, arisen as a result of:
- a) any modification, adjustment or repair to the goods made by a third party other than the Company.
  - b) the subjection of the Goods by the Buyer to unusual physical or electrical stress, the neglect, misuse or accidental damage of the Goods.
  - c) any error or omission relating to the operation of the Goods.
  - d) fair wear and tear.
- 4.8** The Company assumes that all Goods ordered from it are suitable for the purpose for which they are required. The Company is not required to enquire further from the Buyer as to the use to which the Buyer wishes to put the Goods.
- 4.9** The Buyer acknowledges that the Goods will be used only in accordance with the specific instructions included with the packaging of the Goods and the Company will not be liable for any fault or defect caused as a result of the Buyer not following the specific instructions.

## **5. DELIVERY**

- 5.1** Any dates quoted for delivery of the Goods are approximate only and the company shall not be liable for any delay in the delivery of the Goods, however caused. Time for delivery shall not be of the essence unless previously and expressly agreed by the Company in writing.

**5.2** The Company reserves the right to deliver Goods by instalments and in such event each instalment shall be treated as a separate contract save that the further delivery of further instalments may be withheld until goods contained in earlier instalments have been paid for in full.

**5.3** The Buyer's signature on the delivery note shall constitute acceptance of the Goods within the meaning of S.35 of the Sale and Supply of Goods Act 1994.

## **6. RISKS AND TITLE**

**6.1** 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 of the Goods, the time when the Company has tendered delivery of the Goods. For the purpose of this clause, "delivery" shall mean the arrival of the Goods at the place of delivery of the Buyer where delivery is by the Company, or the safe loading of the Goods into the Buyer's vehicles at the Company's premises, where delivery is through collection at the Company's premises.

**6.2** Until such time as property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods properly stored, protected and insured. Until that time, the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of the sale or otherwise of the goods, whether tangible or intangible.

**6.3** Until such time as property in the goods passes to the Buyer (and provided the 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 the Goods to the Company, and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the Goods.

**6.4** The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of the Goods, which remain the property of the Company. 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.

## **7. PROPERTY**

Until the date of payment of all the said sums in each and every invoice, both separately and in total:-

**7.1** the property in the Goods contained therein will remain in the Company.

**7.2** the Company may retake possession of and permanently retain the Goods.

**7.3** the Buyer will, if so required by the Company store the Goods in such a way that indicate the Goods are clearly the property of the Company.

**7.4** if the Goods becomes constituents of or converted into other products (“the new goods”) in such a way that the goods are not rapidly identifiable and removable the Buyer shall store such new goods separately and shall notify the Company of the precise location and position thereof and the ownership of such new goods and the property therein shall vest in the Company.

**7.5** Upon any sale of any new goods falling the scope of the foregoing provision by the company, then if the proceeds of the sale exceed the price or the balance of the price of the goods due to the Company from the buyer the Company shall apply the balance of the proceeds of sale as follows:-

**7.5.1** first reimbursing the Company the cost and expenses of the taking of possession and the sale of the new goods and any damage which the Company has suffered as a result of any repudiation of the contract by the Buyer.

**7.5.2** secondly, paying any sums due and owing to other creditors of the Buyer in respect of other items and materials used in connection with the manufacture of the new goods where the property in such items and materials has remained vested in such other creditors by reason of effective reservation of title clauses and the claim of such other creditors pursuant to such reservation of title clauses have been notified to the Company by the Buyer or its liquidator, administrator or receiver or by such other creditors.

## **8. DAMAGE, LOSS OR SHORT DELIVERY**

**8.1** On delivery, the Buyer shall examine the Goods for completeness or defects. Thereafter no claim for damage in transit, for shortage in delivery or for loss of Goods will be entertained unless, in the case of damage, a separate notice in writing is given to the Carriers or to the Company within 48 hours of the receipt of the Goods, followed within 10 days of the date of advice of despatch by a complete claim in writing; or in the case of loss of Goods, a separate notice in writing and a claim is given to the Company and Carriers within 14 days of the date of the Company’s advice of despatch to the Buyer. A signature “unexamined” is only acceptable where any claims are notified within 48 hours of signature. An “unexamined” signature will not be acceptable in the case of the packaging being visibly damaged.

**8.2** The Company shall not in any circumstances be liable, whether in contract or tort, to the Buyer for any indirect or consequential loss or damage (including without limitation, loss of profits, or damage to property) or for any claim against the Buyer by any third party and the guarantee given by the Company hereunder shall not be transferable to any person.

**8.3** The Company's liability for damage or non – delivery of Goods duly notified in accordance with the above shall in any event be limited to replacement of the Goods or repair, within a reasonable time, whether the damage or non-delivery is due to the Company's negligence or not.

## **9.0 RETURNS AND CANCELLATIONS**

**9.1** Unless Goods are defective, the Company will not accept Goods returned without either the prior written consent of the Company or quotation of a valid Return's Authorisation Number (R.A.N.). A returns note quoting the Company's despatch note and invoice number and R.A.N must accompany any Goods approved for return.

The Company reserves the right to make a handling charge of ten per cent of the value of Goods returned by the Buyer if either no longer required or incorrectly ordered.

Carriage for returned items are at the Buyer's expense.

**9.2** Contracts and orders and parts thereof may be cancelled only by the Company's written acceptance of such cancellation. Where the Company accepts such cancellation, the Company reserves the right to charge the Buyer with the amount of any losses or expenses directly or indirectly resulting from such cancellation. Where the Company does not accept such cancellation, they reserve the right to recover the invoice price from the Buyer and to charge the Buyer with additional losses both direct and indirect resulting from such cancellation. It is the policy of the Company to make products to specific Buyer's orders.

**10.1** Whilst every care is taken of the Buyer's property sent to the Company for repair, the Company cannot accept liability for breakages or damage that may arise while the Goods are in transit for the purpose of repair. Any article returned for repair under warranty must be clearly labelled, detailing the fault and the details of the vehicle to which it was fitted.

**10.2** In addition to any right of lien to which the Company may in law be entitled, the Company shall in the event of the Buyer's insolvency be entitled to a general lien on all Goods of the Buyer in the possession of the Company (although such Goods or some of them may have been paid or) for the unpaid price of any Goods sold or delivered to the Buyer by the Company under the same or any other contract or for repair and the Company shall be entitled to retain possession thereof until payment is made. This shall apply notwithstanding the fact that

credit had previously been given for the price of the above mentioned Goods.

## **11. CREDIT ACCOUNTS AND DEALERSHIPS**

**11.1** These will only be opened subject to trade references and a bank reference being given to the satisfaction of the Company. The Company reserves the right to withdraw credit accounts without notice and without assigning any reason and to ask for payment in advance or against delivery as the Company may in its absolute discretion.

**11.2** If the Buyer takes Goods from the Company in excess of the Buyer's credit limit, the Company may require payment on delivery for such excess of Goods.

**11.3** The Company reserves the right to determine the suitability of a Buyer to supply specific Goods.

## **12. TERMS AND PAYMENT**

**12.1** Where the Company has granted credit facilities, the price for the Goods and/or services shall be paid by the Buyer 30 days after the date of the invoice. No other terms are applicable unless they are provided in writing to the Company and so accepted prior to acceptance of any order for Goods.

**12.2** In the event of legal action being taken by the Company against the Buyer for breach of payments obligations hereunder, the Buyer shall be responsible for all costs and disbursements incurred by the Company on a full indemnify basis.

**12.3.1** If no credit facilities have been agreed the price for the Goods shall be paid by the Buyer on a pro – forma basis with funds being cleared prior to the despatch of order.

**12.4** In the event of non – payment the Company without notice reserves the right to charge interest on any outstanding balance owed by the Buyer at the rate of 4% per annum above the Base Rate of Royal Bank of Scotland plc in force at the time when payment was due.

## **13. ORDERS**

**13.1** Written confirmation of telephoned orders should be clearly marked as such, otherwise the Buyer will be held responsible for any loss or damage caused to the Company should the order be duplicated.

**13.2** The Company retains the right to charge a minimum order fee.

## **14. V.A.T**

**14.1** All price lists are exclusive of V.A.T, which where applicable will be added at the prevalent rate.

**14.2** Products may be zero rated when supplied in certain defined situations. It is the responsibility of the Buyer ascertain if zero rating applies in conjunction with their local V.A.T. office. Guidance is available from your local Customs and Excise office. In order to obtain a zero – rated invoice, a current and applicable V.A.T. exemption form must be supplied at time of order.

## **15. LIABILITY**

The Company shall not be liable for any consequential, loss of profits or special loss arising out of any breach of condition, warranty or contract on the part of the Company in respect of the Goods. The Company's liability for such breach in respect of the Goods shall be limited to the net invoice value or at the Company's absolute discretion to the replacement of the Goods.

## **15. EXCLUSIONS**

**16.1** No liability whatsoever shall be incurred by the Company in respect of any representation made by the Company or its agents to the Buyer or the Buyer's agents before the Order was made where such representation related or referred in any way to (i) the correspondence of the Goods to any description or (ii) the quality of the goods or (iii) the fitness of the Goods and for any purpose whatsoever.

**16.1** No liability whatsoever (other than as expressly set out in these terms and conditions) shall be incurred by the Company to the buyer in respect of any express term of the Order whether a condition, warranty or intermediate stipulation (including any liability arising from the breach of such term) where the said term relates or refers in any way to (i) the correspondence of the Goods to any description or (ii) the quality of the Goods or (iii) the fitness of the Goods for any purpose whatsoever.

**16.1** All implied terms and conditions and warranties whether statutory or otherwise as to (i) the correspondence of the Goods to any description or (ii) the satisfactory quality of goods provided as part of the Goods or (iii) the fitness of the Goods and for any purpose whatsoever (whether known by the Company or not) are hereby excluded from the Order (other than as may be expressly set out in these terms and conditions).

**16.1** The Company does not seek to exclude liability for death or personal Injury caused by the Company's negligence, nor (where the buyer deals as a consumer within the meaning of Section 12 of the Unfair Contract Terms Act 1977) to exclude liability for breach of the

obligations arising from Sections 2 to 5 and 13 to 15 of the Supply of Goods and Services Act 1982.

## **17. FITNESS**

**17.1** The Company is not able to determine questions of wrongful application of its products and it shall be the absolute responsibility of the Buyer to determine that the goods are suitable and fit for the purpose for which they are bought. The Company will not be liable for any loss or damage thereby arising.

## **18. FORCE MAJEURE**

**18.1** The Company shall not be liable to the Buyer or be deemed to be in Breach of the contract by reason of any delay in performing, or any failure to perform, any of the company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's control:

- a) act of God, explosion, flood, tempest, fire or accident;
- b) war or threat of war, sabotage, insurrection, civil disturbance  
correquisition;
- c) acts, restrictions, regulation, by-laws, prohibitions or measures  
of any kind on  
the part of any governmental, parliamentary or local authority;
- d) import or export regulations or embargoes;
- e) strikes, lock-outs or other industrial actions or trade disputes  
(whether involving employees of the Company or of a third  
party);
- f) difficulties in obtaining raw materials, labour, fuel, parts or  
machinery;
- g) power failure or breakdown in machinery;
- h) theft

## **19. LAW APPLICABLE**

**19.1** These conditions shall be governed and construed in accordance with English law and all disputes arising in connection therewith shall be submitted to the jurisdiction of the courts of England and Wales.

**20. REASONABLENESS**

In the event of any Goods received by the Buyer and deemed by the Buyer to be defective, the Buyer will contact the Company and allow the Company every opportunity to rectify such defect(s) by means of providing replacement part(s) or to effect repairs prior to said Goods being returned to the Company. Goods may not be returned solely at the Buyer's discretion and without the Company's agreement.