

WELLS FIREWORKS (DARTFORD) LTD

TERMS AND CONDITIONS OF SALE OF GOODS

1 Definitions:

1.1 In these Conditions the following words have the following meanings:

Wells means Wells Fireworks (Dartford) Ltd (Registered in England and Wales under number 01791727) . Also referred to as Wells, Wells Fireworks and Wells Pyrotechnics. In most cases in the following document *Wells* has been used to clarify the term supplier. It includes all *Employees* and *Authorised Representatives* of Wells Fireworks.

Goods means the goods which *Wells* is to supply in accordance with these *Conditions* and includes, but is not limited to, all special effects, pyrotechnics, fireworks, igniters and explosives.

Carrier means a freight, commercial or private individual(s), firm or organisation that has been chosen to transport the *Goods* or products either for the whole journey or as a part of a wider distribution chain.

Order means a request for *Goods* of specific type(s) and number(s) to be supplied by a specific time or times.

Customer means the person(s), firm or company or organisation who accepts a quotation from *Wells* for the sale of the *Goods* or whose *Order* for the *Goods* is accepted by *Wells*.

End User means the person or persons actually using/firing the product. This may not be the *Wells* direct Customer if the *Goods* have been resold, lent or given away.

Conditions means the standard terms and *Conditions* of sale set out in this document but not excluding any further special terms and *Conditions* agreed in writing between the Customer and an *Authorised Representative* of *Wells*.

Contract means the agreement for the sale and purchase of the *Goods* between *Wells* and the Customer.

Authorised Representative means either of the Managing Directors or the Factory Manager of *Wells* Fireworks (Dartford) Ltd.

Employees means anyone permanently employed either on a full or part-time basis by the Customer or *Wells* as applicable.

Agents means anyone contracted by, or working ad-hoc or temporarily for, but in any case acting on behalf of, either the Customer or *Wells* as applicable.

2 Application of Terms

2.1 Subject to any variation under clause 2.2 any *Contract* of sale will be on these *Conditions* to the exclusion of all other terms and *Conditions* (including any terms or *Conditions* which the Customer purports to apply under any purchase *Order*, confirmation of *Order*, specification or other document).

2.2 No variation of these *Conditions* shall be effective unless expressly agreed in writing by an *Authorised Representative* of *Wells*.

3 Use of Goods

3.1 Any advice or recommendation given verbally or in writing by *Wells' Employees* or *Agents* to the *Customer's Employees* or *Agents* is given freely and with no recommendation and if followed or acted upon is done so entirely at the Customer's own risk and accordingly *Wells* shall not be liable for any such advice. This advice may include, but not be limited to, storage, disposal, application or use of the *Goods*.

3.2 Products supplied by *Wells* may be dangerous and can cause injury or fatality if misused, abused, dismantled or modified.

3.3 Written instructions and Safety Data sheets are available by request and must be read and understood if the *End User* is unfamiliar with the *Goods* being used. It is the *Customer's* responsibility to ensure that the *Goods* are used correctly. If the Customer or *End User* has any enquiries in relation to the written instructions provided by *Wells*, then *Wells Fireworks (Dartford) Ltd* should be contacted for clarification or advice prior to use of the *Goods*.

4 Orders and specifications

4.1 All *Orders* placed by the Customer must be confirmed to *Wells* in a written form (email, fax or letter) as set down in clause 15. Only once *Wells* has acknowledged in writing can they be deemed to be accepted by *Wells*. This *Order* should specify the type and quantity of *Goods* required, the delivery address and an expected delivery date along with any special instructions.

4.2 Once an *Order* has been accepted by *Wells* it may only be cancelled by the Customer with the agreement in writing of *Wells* and on terms that the Customer shall indemnify *Wells* 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 *Wells* as a result of cancellation.

4.3 It is the *Customer's* responsibility to ensure that the terms of the *Order* and any applicable specification are complete and accurate.

4.4 If when using the Customer's specification to manufacture *Goods* or apply any process to ready made *Goods* a claim for infringement of any statutory or EC requirements, patent, copyright, design, trade mark or other industrial or intellectual property rights of another person occurs then the Customer shall fully indemnify *Wells* against any loss, damages, costs or expenses awarded against or incurred by *Wells* in connection with or paid or agreed to be paid by *Wells* in settlement of the infringement.

4.5 *Wells* 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 *Wells*' specification, any changes which do not materially affect their quality or performance.

5 Price of the goods

5.1 Unless otherwise agreed by *Wells* in writing, as set down in clause 15, the price for the *Goods* shall be the price set out in *Wells'* current price list current at the date the *Order* was confirmed. (The current price list is available at www.wellsfireworks.co.uk or via request to *Wells*).

5.2 All prices quoted by *Wells* are in sterling unless otherwise agreed in writing by *Wells* as set down in clause 15.

5.3 The basic price for the *Goods* shall be exclusive of any value added tax (VAT) at the current prevailing rate. It will also exclude all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Customer will pay in addition (where relevant) when it is due to pay for the *Goods*.

5.4 *Wells* reserves the right to adjust the price of the *Goods* before they have been delivered to the Customer in the case of:

- (a) an error or omission in the quotation or published lists; or
- (b) an increase in the cost to *Wells* of providing the *Goods* due to any factor beyond their control.

5.5 *Wells* reserves the right to make an additional charge for small *Orders* to compensate for the proportionally larger costs of packing materials and time expended.

5.6 *Wells* reserves the right to charge an additional percentage on the price of any *Goods* which are sold in less than whole box quantities to compensate for the additional time spend in splitting and re-boxing such *Goods*.

6 Terms of payment

6.1 For all Account *Customer's*, full payment of the price for the *Goods* is due within 30 days of the Invoice date. Failure to pay within this period may result in Account facilities being withdrawn either for a probationary period or permanently.

6.2 For all Non-Account *Customer's* full payment must have been received before the *Goods* can be despatched. A pro-forma will be prepared to enable this. Note clause 5.4 pertains to this.

6.3 All Payments are to be made in Sterling. UK payments shall be made by either BACS, Cheque, cash, credit or debit cards. All payments from outside the UK shall be made by BACS or Debit card only.

6.4 *Wells* reserves the right to demand, from any *Customer*, all or any part of any payment in advance for any *Order* of the *Goods* as *Wells*, in its sole discretion, shall decide.

6.5 Time for payment is of the essence.

6.6 If the *Customer* fails to pay *Wells* any sum pursuant to the *Contract*, the *Customer* shall be liable to pay interest at the annual rate of 5% above the current national base lending rate taken at the Invoice due date until full payment is made, whether before or after any judgment.

6.7 No payment shall be deemed to have been received until *Wells* has received cleared funds.

6.8 *Wells* shall retain title in the *Goods* until all sums due in respect thereof have been received in full. However all risk shall pass to the *Customer* in accordance with clause 9.1. If any part of the payment due is outstanding *Wells* shall be entitled to retain or regain physical possession of any of the *Goods*.

6.9 Should the *Customer* fail to make the full payment on the due date then, without prejudice to any other right or remedy available to *Wells*, *Wells* shall be entitled to:

6.9.1 Cancel the *Contract* or suspend any further deliveries to the *Customer*;

6.9.2 Allocate any payment made by the *Customer* to such of the *Goods* supplied under this or any other *Contract* between the *Customer* and *Wells* as *Wells* may think fit (notwithstanding any purported appropriation by the *Customer*).

6.9.3 (if an Account *Customer*), permanently or temporarily reduce his standing to that of Non-Account status and require advance payment on all future *Goods* in accordance with 6.2.

6.10 Unless the *Customer* has a valid court *Order* requiring an amount equal to such deduction to be paid by *Wells* to the *Customer* then the *Customer* shall agree to pay all sums due under the *Contract* without deduction, set off, counterclaim discount, abatement or otherwise.

6.11 All payments payable to *Wells* under the *Contract* shall be due immediately upon termination of the *Contract* despite any other provision.

7 Delivery

7.1 Unless otherwise agreed in writing by *Wells* or by unavoidable circumstance all *Goods* shall be delivered to the address as arranged or specified and by the date given in the *Order* as set out in clause 4.1. If the *Goods* are to be delivered in advance of the Delivery Date then reasonable notice will be given to the *Customer*. The *Customer* shall make all arrangements to take delivery of the *Goods* whenever they are tendered for delivery.

7.2 Unless otherwise arranged *Wells* shall select a *Carrier* for delivery of the *Goods* to the *Customer*. If the *Customer* selects a *Carrier* for delivery of the *Goods* then they must notify *Wells* at least 10 working days prior to the Delivery Date of its preferred *Carrier* for the delivery of the *Goods*. For avoidance of doubt, delivery to the *Carrier* is to be treated as delivery to the *Customer* and all costs of delivery are for the *Customer's* account.

7.3 The *Customer* shall obtain all necessary import licences, clearances and other consents necessary for the purchase of the *Goods*. In practice *Wells* will normally use a *Carrier* that will arrange all the necessary paperwork and *Wells* shall provide on request all reasonably necessary documentation required by the *Customer* or *Carrier* for this purpose. Once the *Goods* have been dispatched by *Wells* the *Carrier* is deemed to be working for the *Customer* and as such the *Customer* accepts all responsibility for the *Carriers* actions.

7.4 Whilst *Wells* will make all reasonable efforts to deliver the *Goods* in time, all Delivery Dates are approximate only and *Wells* shall not be liable for any delay in delivery of the *Goods* however caused. Time for delivery shall not be made of the essence by notice.

7.5 Where the *Goods* are arranged to be delivered in instalments, each delivery shall constitute a separate *Contract* and failure by *Wells* to deliver any one or more of the instalments in accordance with these *Conditions* or any claim by the *Customer* in respect of any one or more instalments shall not entitle the *Customer* to treat the *Contract* as a whole as repudiated.

7.6 If the *Customer* fails to take delivery of the *Goods* or fails to give *Wells* or the *Carrier* adequate delivery instructions at the time stated for delivery or is not present to receive the *Goods* when delivery is attempted (otherwise than by reason of *Wells'* fault) then, without prejudice to any other right or remedy available to *Wells*:

7.6.1 the *Goods* will be deemed to have been delivered;

7.6.2 the *Contract* between *Wells* and the *Customer* shall be deemed to have been fulfilled.

7.6.3 all risk in the *Goods* will pass to the *Customer* (including any loss or damage caused whilst in *Wells'* care);

7.6.4 *Wells* may store the *Goods* until actual delivery and charge the *Customer* for the reasonable costs (including insurance) of storage; or

7.6.5 *Wells* may sell or otherwise dispose of the *Goods*.

7.7 Subject to the other provisions of these *Conditions* *Wells* will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business,

depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the *Goods* (even if caused by *Wells*' negligence), nor will any delay entitle the *Customer* to terminate or rescind the *Contract* unless such delay exceeds 65 working days.

8 Non or part delivery

8.1 Unless the *Customer* can provide conclusive evidence proving the contrary then the quantity of any consignment of *Goods* as recorded by *Wells* upon despatch from *Wells*' place of business shall be conclusive evidence of the quantity received by the *Customer* on delivery.

8.2 No liability will be due to *Wells* for any non or part delivery of *Goods* (even if caused by *Wells*' negligence) unless written notice is given to *Wells* within 2 working days of the date when the *Goods* would in the ordinary course of events have been received.

8.3 Where non or part delivery of the *Goods* has occurred then *Wells*' liability shall be limited to replacing the *Goods* within a reasonable time or issuing a credit note at the pro rata *Contract* rate less reasonable expenses against any invoice raised for such *Goods*.

8.4 Any agreement to replace part or non-delivered *Goods* is deemed to form a new *Contract* between *Wells* and the *Customer*.

9 Risk and property

9.1 On dispatch of *Goods* as set out in clauses 7.1 and 7.2 from *Wells* to be delivered at the *Customer*'s premises or other premises by request of the *Customer* all Risk of damage to or loss of the *Goods* shall pass to the *Customer*.

9.2 Notwithstanding delivery and the passing of risk in the *Goods*, or any other provision of these *Conditions*, actual ownership of the *Goods* shall not pass to the *Customer* until *Wells* has received full, cleared payment of the *Goods* value and all other *Goods*/services as agreed to be sold by *Wells* to the *Customer* for which payment is then due.

9.3 Until such time as ownership of the *Goods* does pass to the *Customer*, the *Customer* shall hold the *Goods* as *Wells*' fiduciary agent and Bailee. *Goods* kept thus shall be kept separate from others of the *Customer* and third parties and properly stored, protected, insured and identified as *Wells*' property. However the *Customer* shall be entitled to resell or use the *Goods* in the ordinary course of their business.

9.4 Provided the *Goods* are still in existence, have not been resold and until such time as the property in the *Goods* passes to the *Customer*, *Wells* shall be entitled as to require the *Customer* to return the *Goods* to *Wells*.

If the *Customer* fails to do so forthwith, *Wells* (or its *Agents* or *Employees*) may enter upon any premises of the *Customer* or any third party where the *Goods* are stored and repossess the *Goods*.

9.5 The *Customer*'s right to possession of the *Goods* shall terminate immediately if:

9.5.1 the *Customer* has a bankruptcy *Order* made against them or makes an arrangement or composition with their 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 meeting 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 a resolution is passed or a petition presented to any court for the winding up of the *Customer* or for the granting of an administration *Order* in respect of the *Customer*, or any proceedings are commenced relating to the insolvency or possible insolvency of the *Customer*; or

9.5.2 the *Customer* suffers or allows any execution, whether legal or equitable, to be levied on their property or obtained against them or it, or fails to observe/perform any of their obligations under the *Contract* or any other *Contract* between *Wells* and the *Customer*, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the *Customer* ceases to trade; or

9.6 *Wells* shall be entitled to recover payment for the *Goods* notwithstanding that ownership of the *Goods* has not passed from *Wells* to the *Customer*.

10 Product Warranty

10.1 *Wells* warrants that (subject to the place of storage being in a fit, suitable condition for pyrotechnic storage or subject to any other provisions of these *Conditions* or where otherwise a warranty supplied in relation to any of the *Goods* specifies a different expiry period) upon delivery, and for a period of 12 months from the date of delivery, the *Goods* will be of satisfactory quality within the meaning of the Sale of *Goods* Act 1994.

10.2 *Wells* shall not be liable for a breach of the warranty in condition 10.1 unless:

10.2.1 the *Customer* gives written notice, as per clause 15, detailing the defect(s) to *Wells* and (if the defect is as a result of damage in transit) to the *Carrier*, within 7 days of the time when the *Customer* discovers or ought to have discovered the defect; and

10.2.2 *Wells* is given a reasonable opportunity after receiving the notice of examining such *Goods* and the *Customer*, (if asked to do so by *Wells*), returns such *Goods* to *Wells* Factory, using a courier of *Wells* choice and at *Wells*' cost for an examination to take place there.

10.3 *Wells* shall not be liable for a breach of the warranty in condition 10.1 if:

10.3.1 the *Customer* makes any further use of such *Goods* after giving such notice; or

10.3.2 the *Customer* sells on, gives or lends the *Goods* to a third party; or

10.3.2 the defect arises because the *Customer* failed to follow *Wells*' 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

10.3.3 the *Customer* alters or repairs such *Goods* without the written consent of *Wells*.

10.4 *Wells* shall at its discretion either replace such *Goods* or refund the price of such *Goods* at the *pro rata Contract* rate provided that, if *Wells* requests, the *Customer* shall, at *Wells*' expense, return the *Goods* to *Wells*.

10.5 If the *Goods* are found to not be faulty then *Wells* will charge the *Customer* for all costs incurred. These costs may include, but not exclusively be, servicing, carriage, packaging, research & testing time and materials.

10.6 If *Wells* complies with condition 10.4 it shall have no further liability for a breach of the warranty in condition 10.1 in respect of such *Goods*.

11 Limitation of Liability

11.1 Subject to condition 10, the following provisions set out the entire financial liability of *Wells* (including any liability for the acts or omissions of its *Employees, Authorised Representatives, Agents* and Sub-Contractors) to the *Customer* in respect of:

11.1.1 any breach of these *Conditions*; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the *Contract*.

11.2 Save for the *Conditions* implied by section 12 of the Sale of *Goods* Act 1979; all warranties, *Conditions* and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the *Contract*.

11.3 Nothing in these *Conditions* excludes or limits the liability of *Wells* for death or personal injury caused by *Wells*' negligence or fraudulent misrepresentation.

11.4 Subject to *Conditions* 11.2 and 11.3:

11.4.1 *Wells*' 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 this *Contract* shall be limited to the *Contract* price; and

11.4.2 *Wells* shall not be liable to the *Customer* or any other party for any direct, indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the *Contract*.

12 Assignment

12.1 The *Customer* shall not be entitled to assign the *Contract* or any part of it without the prior written consent of *Wells*.

12.2 *Wells* may assign the *Contract* or any part of it to any person, firm or company.

13 Force Majeure

Wells reserves the right to defer the date of delivery or to cancel the *Contract* or reduce the volume of the *Goods Order* by the *Customer* (without liability to the *Customer*) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of *Wells*. These circumstances include, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, labour shortages or labour disputes, or legal restraints or actions, or a *Carriers* ability to carry the *Goods* or to deliver the *Goods* or of obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, the *Customer* shall be entitled to give notice in writing to *Wells* to terminate the *Contract*.

14 General

14.1 Each right or remedy of *Wells* under the *Contract* is without prejudice to any other right or remedy of *Wells* whether under the *Contract* or not.

14.2 If any provision or part 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. However, under *Wells* discretion, the remaining provisions of the *Contract* and the remainder of such provision may be held to continue in full force and effect or the *Contract* may be cancelled wholly with all liabilities falling to the *Customer*.

14.3 Failure or delay by *Wells* in enforcing or partially enforcing any provision of the *Contract* will not be construed as a waiver of any of its rights under the *Contract*.

14.4 Any waiver by *Wells* of any breach of, or any default under, any provision of the *Contract* by the *Customer* will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the *Contract*.

14.5 The parties to this *Contract* do not intend that any term of this *Contract* will be enforceable by virtue of the *Contracts (Rights of Third Parties) Act 1999* by any person that is not a party to it.

14.6 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.

15 Communications

15.1 All communications between the parties about this *Contract* must be in writing. They may either be delivered by hand, sent by pre-paid registered first class post, facsimile transmission or email (with a read receipt):

15.1.1 (in case of communications to *Wells*) to its registered office or such changed address as shall be notified to the *Customer* by *Wells*; or

15.1.2 (in the case of the communications to the *Customer*) to the registered office of the addressee (if it is a company) or (in any other case) to the last notified address of the *Customer* set out in any document which forms part of this *Contract* or such other address as shall be notified to *Wells* by the *Customer*.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by registered pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

15.2.2 if delivered by hand to a *Wells* Representative, Staff Member or other *Authorised Representative* on the day of delivery;

15.2.3 if sent by facsimile transmission on a working day prior to 3.00 pm, at the time of transmission and otherwise on the next working day and that a notification of receipt is made by *Wells*.

15.2.4 if sent by email on a working day prior to 3.00 pm, at the time of transmission and otherwise on the next working day and that a notification of receipt is made by *Wells*.

15.3 All communications addressed to *Wells* shall be marked for the attention of The Manager, *Wells* Fireworks.