

# **MARSHALL BREWSON**

## **COMPRESSED AIR SPECIALISTS**

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### **CONDITIONS OF SALE OF GOODS FOR USE IN THE UNITED KINGDOM (TC-2009)**

#### **1. GENERAL**

These conditions of sale override any clauses in buyers purchase orders and in any other communication if in conflict therewith Marshall Brewson Ltd. here in after known as "The Company".

#### **2. VALIDITY OF QUOTATION**

The Company reserves the right to refuse the Purchaser's acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn in such period. No binding contract shall be created by the acceptance by the Purchaser of the Company's quotation until notice of acceptance of the order has been given in writing which shall have been signed by the Company's duly authorised representative or the Company has indicated its acceptance of the offer by making delivery or part delivery of the goods. In the event that the Company gives no quotation, and it has received an order from the Purchaser, all deliveries are made subject to these General Conditions of sale.

#### **3. PRICES**

All goods are sold subject to the prices and any relevant discounts ruling at the time of delivery. The Company's prices, discount rates and Conditions of Sale may be altered at any time without notice.

Any prices or carriage queries must be reported within 14 days of date of invoice, no credits will be raised outside of this time period.

All discounts and prices are calculated upon a "whole order" or "majority of order" basis. If, when placing an order, the Purchaser selects only certain items or reduced quantities are specified, the Company reserves the right to review the prices and discounts at which such orders are accepted.

All prices are subject to the addition of Value Added Tax at the appropriate rate

#### **4. PAYMENTS**

**A-** Unless otherwise agreed in writing payment is due in full on delivery of the goods. Where credit terms are agreed, payment must be made by the last day of the month following delivery. Any variations to these credit terms will only be accepted if agreed in writing by an authorised Director of the Company. If credit terms are exceeded the Company reserves the right to demand immediate payment of the account in total.

The Company reserves the right to refuse credit at any time and to demand immediate payment of all monies outstanding. The Company shall be entitled to charge interest on overdue accounts at the prescribed rate prevailing at the date of delivery and the Company shall be entitled to suspend deliveries of any of the Purchaser's order or to cancel such orders if any payment from the Purchaser to the Company becomes overdue. The prescribed rate when referring to payment of interest means the rate of two percent per annum above Base Lending Rate of NHBC Bank Ltd or if that Bank ceases to publish such a rate then such other comparable rate as the Company shall reasonably determine.

**B-** Where the contract is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each sub instalment, delivery or part shall be made as if the same constituted a separate contract.

**C-** Purchasers who wish to open a credit account with the Company must fill in a credit application form (form no. HS1-12) Until such time as the Company has granted the purchaser credit account facilities all goods must be paid for in full on delivery.

**D-** All costs including legal expenses incurred by the Company in recovering overdue debts will be payable by the Purchaser.

## **5. CREDIT**

Any contract shall be subject to the Company being satisfied as to the Purchaser's credit worthiness and without prejudice to the generality of the foregoing the Company may (in its absolute discretion) having informed the Purchaser that the goods are ready for delivery, refrain from delivering the goods until such times as the Purchaser tenders the purchase money to the Company in a form satisfactory to the Company.

## **6. CARRIAGE**

Unless otherwise specified the price quoted includes delivery from the Company's warehouse to the Purchaser within the Company's van delivery area, full details of which are available on request. The Company reserves the right to choose the method of transport and to charge for deliveries outside the Company's van delivery area or the special delivery arrangements within the area. Where pursuant to an order goods are specially ordered from manufacturers the customer shall pay any carriage charge levied.

## **7. LOSS OR DAMAGE IN TRANSIT**

Purchasers are asked to note the prescribed periods of notification of damage to, or shortage and non-delivery of goods and the submission of claims in respect thereof. We will hold ourselves indemnified from any loss resulting from the Purchaser's failure to comply with the requirements of the Railway Executive, Road Carriers and Post office regulations. The Company shall repair or replace free of charge goods damaged in transit or not delivered in accordance with the Advice Note provided that the Company is given written notification of such damage or non-delivery within such time (being not more than 3 days) as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit or, where delivery is made by the Company's own transport, within 3 days after receipt of the Advice Note. Notwithstanding the above undertaking, the Company will only consider claims for alleged shortage if they are received within two working days of the goods by the Purchaser together with sufficient information to enable the Company properly to identify the shortage including the Advice Note number, case number and condition of case.

## **8. TITLE TO GOOD**

**A-** The Company and the Purchaser expressly agree that until the Purchaser has paid all sums due from it to the Company title to the goods shall remain with the Company although the risk therein passes to the Purchaser at the point when delivery is made.

**B-** The Purchaser is licensed to incorporate the goods in or use the goods as material for other goods or products (the "New goods"). Where the goods are severable after such incorporation or use, the Company reserves the right to sever and to remove the same. Where the goods are not severable, then as and from the moment when the goods are incorporated in or used as material for other goods or products, the New Goods shall be and be deemed to be owned legally and beneficially by the Company and any other owner of the New Goods in common with that other owner. The Company shall be entitled to require the same to be sold in order to recoup the monies owed to it. The Company's rights shall be limited to the proportion necessary to recoup the money owed to it in respect of the goods.

**C-** The Purchaser has the right to sell or agree to sell the goods or the New Goods in the course of his business and to pass good title to the goods or the New goods to his Customer being a bona fide Purchaser for value without notice of the Company's rights subject to the following express conditions: -

- (i) That the entire proceeds of any sale are held in trust for the Company in a separate bank account (details of which account must be supplied to the Company on demand) and are not mixed with other monies or paid into an overdrawn bank account and at all times be identifiable as the Company's monies and
- (ii) That the goods or the New Goods shall only be sold for a reasonable price and
- (iii) The Purchaser hereby assigns to the Company all rights and claims which the purchaser may have against its Customers arising from such sales until payment is made in full.

**D-** Until title to the goods or the new goods passes: -

- (i) The Purchaser will hold the goods or the new Goods as fiduciary agent and bailiff for the Company.
- (ii) The goods or the New Goods shall, subject to clause 8-B, be kept separate and distinct from all other property of the Purchaser and of third parties and in good and substantial repair and condition and be stored and labelled in such a way as to be clearly identifiable as belonging to the Company.
- (iii) The Company may at any time revoke the power of sale and use contained in clause 8-C by notice to the Purchaser if the Purchaser is in default for longer than 14 days in the payment of any sum whatsoever

due to the Company (whether in respect of the goods or the New goods or any other goods supplied at any time by it to the Purchaser or if the Company has bona fide doubts as to the solvency of the Purchaser).

(iv) The Purchaser's power of sale and use contained in clause 8-C shall automatically cease if the Purchaser (being a Business) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its Creditors or has a Nominee, Supervisor or Administrator appointed pursuant to Part I or Part II of the Insolvency Act 1986 (or any statutory modification or re-enactment thereof) or has a receiver or Administrator Receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any Deed of Arrangement or has a nominee or Supervisor appointed under any arrangements with its Creditors pursuant to Part VIII of the Insolvency Act 1986 (or any statutory modification or re-enactment thereof) or (being a number of individuals or corporate persons trading together as a partnership) an Order is made pursuant to the Insolvency Act 1986 and the Insolvency Partnerships Order 1986 (or any statutory modification or re-enactment thereof) by reason of the insolvency of the Purchaser or any of its members.

(v) Upon determination of the Purchaser's power of sale and use pursuant to clause 8-D(iii) or 8-D(iv) the Purchaser shall place any of the goods or the New Goods in his possession or under his control and unsold at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Company for the purpose of removing such goods or New Goods. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of the Business there under or otherwise.

(vi) The Company shall at any time be entitled to appropriate any payment made by the Purchaser in respect of any goods in settlement of such invoice or accounts in respect of such goods or New goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Purchaser.

## **9. INSTALLATIONS AND SERVICE**

Where a Contract includes loading, offloading, assembly, installation, demonstration or servicing of machinery, equipment or other goods off the company's premises:

(i) The purchaser shall be responsible for and shall indemnify the company from and against all liabilities whether for damages, costs, expenses or otherwise arising out of the death, personal injury of any person, loss of production, or damage to any property howsoever caused provided that this indemnity shall not apply to liabilities arising solely from the negligence of the company.

(ii) The company will supply at the purchaser expense the necessary technicians and engineers to carry out such work.

(iii) Any products requiring assembly or erection shall be deemed to be commissioned when accepted by the buyer or when a certificate of commission has been given to the purchaser by the technician or engineer of the company in charge of the assembly or erection.

Statutory regulations: It is the responsibility of the purchaser to ensure compliance with the 'Pressure Systems and transportable Gas Containers Regulations' after equipment has been installed.

All service, repair or installation work shall be carried out within the normal working hours (Monday – Friday, 8:30 – 16:30) outside of these hours will be charged at the rates below:

Monday- Thursday 16:30 – 8:30	1.5 x Standard labour rate per hour
Friday 16:30 – Saturday 12:00	1.5 x Standard labour rate per hour
Saturday 12:00- Monday 8:30	2 x Standard labour rate per hour
Callouts	£50.00 + 4 hours at associated labour rate
Travel	£0.40 per mile, labour at associated rate

Callouts: All callouts are at the sole discretion of the company. The company shall not be deemed liable to the purchaser or deemed in breach of contract by failure to attend any out of hour's callouts. Any callout that continues after the 4 hours standard charge will be charged at associated rate till the engineer arrives back to the companies' premises.

It is important that all spares/equipment should only be fitted by competent trained personnel and in accordance with the installation, operating and maintenance instruction manual.

## **10. PLANT HIRE**

All plant is hired in accordance with our terms and conditions of hire, which is available from the company website or on request.

## **11. DELIVERY**

Any times quoted for despatch, repair or replacement are to be treated as estimates only and the Company shall not be liable for failure to despatch, repair or replace within such time.

## **12. WARRANTY**

The Company will give the Purchaser a warranty equivalent to the warranty (if any) that the Company may have received from the supplier of the goods to the Company. Save as aforesaid and as provided in Clause 7 the Company shall not be under any liability in respect of defects in goods delivered/services or for any injury, loss or damage resulting from such defect or from any work done in connection therewith and its liability under this Clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of such goods. Save as aforesaid, the Company shall be under no liability in contract, tort or otherwise for any personal injury, loss or damage of whatsoever kind or howsoever caused for anything done or omitted in connection with the goods or any work done in connection therewith. For the purposes of this Clause the Company contracts on behalf of itself and as Trustee for its servants and agents.

Nothing in this Clause shall be deemed to exclude or restrict the liability of the Company for death or personal injury resulting from the negligence of the Company, its servants or agents.

It is important that all spares/equipment should only be fitted by competent trained personnel and in accordance with the installation, operating and maintenance instruction manual.

## **13. RETURN OF GOODS**

In no circumstances may goods supplied be returned without the Purchaser having first applied for and obtained the written consent of the Company. Goods so returned must be consigned carriage paid and accompanied by a packing note stating our advice note number. If the goods are returned to the trade counter a purchasers returns note must be signed for by a member of the company with the goods. A re-stocking charge may be deducted from any credit allowed where it is established that the reason for their return was not the subject of the provisions of Clause 7 & 11 hereof or through any error on the part of the Company. All goods must be returned within 28 days from date of invoice. No goods will be accepted unless in the original condition complete with original packing.

## **14. SAMPLES**

Any samples submitted with the Company's quotation or at the Purchaser's request must be returned in good condition within sixty days of receipt or such shorter period as may be specified and may be charged if not so returned.

## **15. CANCELLATION**

The Company reserves the right to refuse to accept any cancellation of order unless notification in writing is given to the Company and accepted in writing by the Company. In the event of any cancellation the Purchaser must accept responsibility for the payment of any charge incurred by the Company.

## **16. REJECTION**

Unless otherwise agreed in writing, goods rejected by the Purchaser as not complying with the Contract must be rejected within seven working days of delivery.

## **17. MINIMUM INVOICE VALUE**

The Company reserve the right to impose a surcharge on orders of less than £10 net value exclusive of VAT and a minimum invoice charge of £10 plus VAT will be applied.

## **18. STORAGE**

If the Company does not receive forwarding instructions sufficient to enable it to despatch within fourteen days after notification that the goods are ready for delivery to the Purchaser, the Purchaser shall take delivery or arrange for storage. If the Purchaser does not so take delivery or arrange for storage, the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with these conditions. The Company may arrange storage either at the Company's own premises or elsewhere on the Purchaser's behalf and all charges for storage, for insurance or for demurrage shall be payable by the Purchaser.

## **19. DESCRIPTIVE MATTER AND ILLUSTRATIONS**

Whilst every care has been taken in compiling catalogues the Company cannot accept responsibility for errors or omissions. All descriptive and forwarding specifications, drawings and particulars of weights and dimensions issued by the Company are approximate only and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract.

## **20. LIMITS OF CONTRACT**

Any quotation includes only such goods, accessories and work as are specified therein.

## **21. CERTIFICATION**

Purchases requiring material from a quality assured source or certificates of conformity must specify their requirements at time of placing order. Requests must be made or confirmed in writing prior to release of material.

## **22. VARIATIONS**

In the event of variation or suspension of the work on the Purchaser's instructions or by reason of a lack of instructions, the contract price shall be adjusted to reflect costs involved. Where a price per unit has been quoted and the Purchaser requires a smaller number of units to be delivered than those quoted for, the Company reserves the right to adjust the rates of prices applicable thereto.

## **23. PATENTS**

In the event of any claim being made or action being brought against the Purchaser in respect of infringement of British patents by the use of goods supplied hereunder, the Purchaser shall notify the Company immediately and the Company shall be at liberty with the Purchaser's assistance if required, but at the Company's expense, to conduct through the Company's own Lawyers and experts all negotiations for the settlement of the same or any litigation that may arise there from.

However where such goods are manufactured and/or supplied to the Purchaser will hold the Company harmless against any loss, damage or expense resulting from infringement of patents or trade marks arising from compliance by the Company with the Purchaser's specification, design or instructions.

## **24. BANKRUPTCY**

In the event of the Purchaser committing any breach of this contract, or if any distress or execution is levied upon the goods of the Purchaser or if he offers to make any arrangement with or for the benefit of his creditors, or commits any act of bankruptcy or (being a limited company) has a receiver appointed of its undertaking or assets or any part thereof, or (save for the purposes of a reconstruction or amalgamation without insolvency) goes into liquidation, the business shall thereupon be entitled without prejudice to their other rights, forthwith to suspend all further deliveries until the default has been made good or to determine the contract or any unfulfilled part thereof, or at the Company's option to make partial deliveries.

## **25. FRUSTRATION**

The Company shall be entitled, without liability on its part and without prejudice to its other rights, to terminate the contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries. If the completion of the manufacture of the goods by the Company's suppliers is prevented, hindered or delayed whether directly or indirectly, by reason of the Purchaser failing to furnish necessary information or instructions, war, civil commotion, governmental restrictions, transport difficulties, strikes, lock-outs, accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, machinery breakdown or any other cause whatsoever.

## **26. COPYRIGHT**

All drawings, descriptions and other information submitted by the Company shall remain the property of the Company together with the copyright therein.

## **27. LEGAL CONSTRUCTION**

These general conditions of sale shall be construed in accordance with the laws of England.