



## Wizards of NOS – Trade Terms and Conditions 2017 onwards

These terms and conditions are effective as of 1<sup>st</sup> July 2017 and apply from this date forward or until superseded. Contact our head office for the latest copy if unsure your copy is up to date. Existing agents that do not wish to trade under these terms please contact WON within 14 days of receiving a copy. Non-contact will be taken as agreement to the terms and conditions as set out in the following agreement.

### 1. Definitions

- 1.1 "Wizards of NOS" is a trading name of Highpower Systems UK Ltd. and will be referred to hereon as "WON".
- 1.2 "Agent" and "Buyer" refer to an individual or business that purchase WON products or services from WON for the purposes of resale to an End-User under the conditions set in this agreement.
- 1.3 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.4 "End User" refers to an individual or business that purchases products from an authorised Agent for WON.
- 1.5 "Seller" means Highpower Systems UK Ltd. 107 Rands Lane, Doncaster, S.Yorkshire, DN33DZ UK.

### 2. General

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Any advice, recommendation or representation given by the Seller or its employees to the Buyer or its employees or agents as to the storage, application or use of the Goods or otherwise which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and, accordingly, the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.
- 2.6 Nothing in these Conditions shall affect the statutory rights of any Buyer dealing as a consumer.

### 3. Supply of Goods

#### 3.1 Price & Payment

- 3.1.1 Invoiced prices are final. Payment is taken as acceptance of the prices stated in the invoice.
- 3.1.2 Invoice prices can only be challenged if payment is provided before receiving an invoice yet must before the products have been shipped.
- 3.1.3 Price guidelines are to be procured via the Sellers official website or by price sheets available for the present year of the order. Final prices are confirmed via invoice.
- 3.1.4 WON will make every effort to ensure that the prices are up to date and that the buyer has access to current price lists, discount levels, excluded discounted parts and further updates including price changes and such.

- 3.1.5 It is the buyer's responsibility to ensure that all steps are taken to have the latest price list in order to supply the end-user.
- 3.1.6 Won accept no liability for any losses and such incurred by the buyer relating to inaccurate pricing.
- 3.1.7 Payment of the Price is strictly cash with order unless a credit account has been established with the Seller in writing where payment terms are subject to the terms of that agreement.
- 3.1.8 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day until the date of payment at a rate of 5% per annum above the base rate of the Bank of England from time to time.
- 3.1.9 The Seller reserves the right to grant, refuse restrict, cancel or alter credit terms at its sole discretion at any time.
- 3.1.10 If payment of the Price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - 3.1.10.1 require payment in advance of delivery in relation to any Goods not previously delivered;
  - 3.1.10.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - 3.1.10.3 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract) as the Seller may think fit;
  - 3.1.10.4 terminate the contract.

## 3.2 Description

- 3.2.1 Descriptions are for the purpose of identification only.
- 3.2.2 It is the buyer's responsibility to ensure the part is suitable for the application required by the buyer and not to rely on description.
- 3.2.3 The seller will endeavour to maintain accurate descriptions but accepts errors may arise. If such an error is found after purchasing a product;
  - 3.2.3.1 The seller will supply a replacement if the part is unsuitable for the buyer's requirements with respect to function excluding desire of aesthetics.
  - 3.2.3.2 The seller reserves the right to refuse replacement if the part is deemed to fit the functional purpose required.
  - 3.2.3.3 The seller will offer replacement for a functional item if available or refund if one is not available within 14 days of this notification.
  - 3.2.3.4 Refund value may not exceed the value of the part only. Where the part was bought as a singular item refund may also include shipping but is at the seller's discretion.
  - 3.2.3.5 Replacement will only be shipped upon return of the original incorrect item. Shipping for this item to be at the buyer's expense. Exception to this term is granted where the purchase cost of the part is less than 10GBP or at the seller's discretion.

## 3.3 Samples

- 3.3.1 Samples provided for purposes of inspection, trial or R&D remain the property of WON unless written agreement is provided to the contrary by the seller.
- 3.3.2 Samples are provided as such and must not be sold to an end-user unless written agreement if provided to the contrary by the seller.
- 3.3.3 Samples are expected to be returned upon request within reasonable time frames as agreed between the buyer and seller or 60 days.
- 3.3.4 The seller reserves right to invoice for any non-returned parts to a value of their discretion up to the RRP of the product or cost price plus 20% for products without published RRP's.

### 3.4 Delivery

- 3.4.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 3.4.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery date stated.
- 3.4.3 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date.
- 3.4.4 Upon the 14<sup>th</sup> day from date of invoice, if payment in full is not received the Seller reserves the right to use that stock for purposes of alternate sale. After such period it is the Buyer's responsibility to confirm delivery times to ensure stock remains available for their order.

## 4. Agent Obligations

- 4.1 Won expect a high level of Good Practice and Conduct to extend the End-User experience as would be given by WON direct.
  - 4.1.1 This extends to willingness to help and advise where experienced enough to do so.
  - 4.1.2 Offering of systems and parts that are required and not purely for profit.
- 4.2 WON require up to date information for their records. If any agent circumstances, services ie. Re-filler, installer, or address/contact information changes we would appreciate prompt updates in order to adequately advise and forward potential customers.
- 4.3 Agent Competition responsibilities – WON promote fair trade policies to ensure that all agents are given a fair chance to secure business. The following policy must be adhered to under these terms.
  - 4.3.1 Maximum End-User discount to be advertised electronically = 10% such as Website prices, forums, Facebook and similar media.
  - 4.3.2 Maximum End-User discount advertised in hard copy or via radio and other similar media is 15%.
  - 4.3.3 For local shop sales and local events discount is at the discretion of the Agent except: where complaint has been raised and agreed upon by WON for a limit to be applied.
  - 4.1.1 WON reserve the right to apply additional terms to individual agents if felt that the agent practices are not allowing fair competition.
  - 4.1.2 Exception to these terms may be granted where promotional sales with limited durations are applied but must first be agreed upon by WON and to any extended terms in writing before proceeding.
- 4.4 Media Sharing
  - 4.4.1 As a WON agent you are entitled to re-publish any media that is expressively provided by WON such as Youtube videos, Facebook, twitter, Instagram, website images & content except where;
    - 4.4.1.1 The media involves in picture or literature details of a local competing agents work.
  - 4.4.2 WON require equal entitlement to publish media of its agents where WON products are shown or mentioned.

- 4.5 Brand Competition - As a WON agent we expect a fair share of representation to sell WON products.
  - 4.3.1 Selling of competitive brand equipment is permissible.
  - 4.3.2 WON must be notified of any intention to sell competitive equipment before securing supply.
  - 4.3.3 Agents who sell competitive equipment will not be entitled to forwarding of potential customers in favour of other local agents with sole supply.
  
- 4.4 Installation
  - 4.4.1 It is advised that agents either read our technical pages on correct selection of systems and installation practices or contact WON technical staff when specifying or installing to vehicles they have no experience on.
  - 4.4.2 WON will endeavour to educate through technical papers and technical advice to the proper installation techniques as would be suggested by WON representatives.
  - 4.4.3 In the event of a fault or resultant damage to an end-users vehicle we may reserve the right to revoke agent status due to incompetence.
  
- 4.5 Refilling
  - 4.5.1 Agents must exercise safe practices in the process of re-filling cylinders.
  - 4.5.2 Agents must take appropriate steps to ensure customers are not subject to any potential dangers associated with the refilling of cylinders.
  - 4.5.3 Agents must take reasonable steps to ensure and refuse sale of Nitrous Oxide to anyone who is suspected of buying for misuse (Recreational Breathing).
  - 4.5.4 Please see our guidelines on refilling and prevention of misuse.
  
- 4.6 Use of WON products
  - 4.6.1 It is the Agents responsibility to inform an End-User if a product has been modified from original by the Agent and its impact on their warranty. (See Warranty and Returns Section)
  - 4.6.2 Re-branding of WON equipment is prohibited unless granted via an agreement between the Agent and WON. Agreement must be in writing and supplied signed by an authorizing representative of both parties.
  - 4.6.3 Where using WON products within customised systems WON must be mentioned within the system description and any advertising media unless permissible by agreement.
  - 4.6.4 Sale of WON products knowingly to companies or individuals who are not bound by these terms who intend to re-brand, customise or sell without reference of WON is not permitted. In these circumstances where an agent is aware of this it is the agent's responsibility to revoke future sales and supply WON with contact details for an agreement to be made between the company or individual and WON. Known failure to supply these details and continuation of sale of WON goods to these parties may result in the termination of agent status.
  
- 4.7 It is the Agents responsibility to ensure that all customers are given the opportunity to read the WON End-User Terms and conditions before purchasing WON products.
  
- 4.8 Right to terminate – WON reserve the right to revoke trade status and dissociate without notice with any agent who :
  - 4.8.1 Breaches the requirements as specified in this section.
  - 4.8.2 Who sell competitive products and do not endorse the WON brand.
  - 4.8.3 Make false or liable statements regarding WON products.
  - 4.8.4 Use WON claims and features in their advertising and promotion in order to sell competitive equipment.
  - 4.8.5 Install systems to a low or dangerous standard.
  - 4.8.6 Fail to seek advice when installation standards are low, dangerous or incorrect systems are specified.

## 5. Title

- 5.1 Risk of damage or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.
- 5.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Seller to the Buyer including all postage and surcharges associated costs for which payment is then due.

## 6. Warranty & Returns

- 6.1 Warranty Term on all WON products is 1yr unless specified to the contrary in published format or by signed agreement.
- 6.2 Previous warranty terms still apply on products purchased before the effective date of this contract providing sufficient evidence is supplied to substantiate the date claim.
- 6.3 The warranty term is granted to the Agent and not direct to the end user.
- 6.4 Any product that is altered by the Agent becomes void of seller warranty.
- 6.5 Any warranty claim made by an End User must pursue their claim through the agent that supplied the goods and thereon pursue with WON (Exception only if the agent is no longer in business).
- 6.6 The effective warranty term for the Agent applies;
  - 6.6.1 From the date of receipt of the products unless purchased by an end user.
  - 6.6.2 From the date of purchase by an end user up to a maximum of 21 months from original receipt of purchase by the Agent.
- 6.7 It is the responsibility of the Agent to convey any shortfall of warranty term to an End user if products are held long enough to lose full warranty.
- 6.8 To claim on warranty by an end user proof of purchase must be supplied by both the Agent and the end user to confirm the warranty period.

## 7. Claims

- 7.1 Any claim brought against WON excluding claims against personal injury and death will not exceed the value of the original purchase order.
- 7.2 In cases of purchase orders containing more than one system or group of parts any such claim will not exceed the value of the system it was intended or component value if sold separately.
- 7.3 Claims must go through the correct claims procedure as prescribed below;
  - 7.3.1 Any claim must be formally requested in written form in either physical or electronic format.
  - 7.3.2 All claims must be accompanied by proof of purchase, agents copy of end-user purchase and end-user copy where applicable to consider a claim.
  - 7.3.3 This complaints procedure is applicable for Agents only, End-user claim procedure will be described in separate terms but is referred to under the included warranty section.
  - 7.3.4 WON bares no liability for the cost or replacement of parts given to an end user to satisfy their warranty without prior agreement in writing, physical or electronic.
- 7.4 Claims of damage or loss of product during shipping are bound by the service chosen.
  - 7.4.1 Claims will be limited to the maximum value granted by the shipping company's terms of service.

- 7.4.2 Claims where insurance is provided will be limited to the maximum value granted through the insurance process. (Typically cost value of parts lost or stolen only.)
- 7.4.3 In the case of claim WON will endeavour to secure the maximum value possible on the "Agents" behalf.
- 7.4.4 Any successful claim may be redeemed via product, credit on account or refund.
- 7.4.5 Redemption of a successful claim will only be granted upon receipt by WON of the claim value from the shipping company.
- 7.5 For further information relating to Claims see, Warranty and Liability sections.
- 7.6 The Seller shall be entitled in its absolute discretion the amount of refund for defective Goods in the event that the Price has already been paid.
- 7.7 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense.

## 8. Limitation of Liability

- 8.1 WON products are sold for the sole purpose of their ability to raise the effective power level of an internal combustion engine and products in the field of achieving this purpose.
  - 8.1.1 The seller shall not be liable in any event for use of the seller's products in unlawful activities.
  - 8.1.2 It End-users responsibility to determine the legal obligations required for using WON products in accordance with their local authorities and governing bodies.
  - 8.1.3 It is the Buyer's responsibility to inform the end-user of the end-user terms and conditions to which state the clause as noted in 8.1.2.
- 8.2 WON accept no liability for advice given to an End-User if not provided on a case by case basis.
- 8.3 Product claims by the Seller as to the performance of their products are as a guideline only and under no circumstance should the seller be liable if claims cannot be substantiated by the buyer or end-user except if caused by product failure to which is subject to the terms as set out in the warranty section.
- 8.4 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Seller to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.
- 8.5 In no event shall the Seller be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Seller had been made aware of the possibility of the Customer incurring such a loss.
- 8.6 Nothing in these Terms and Conditions shall exclude or limit the Seller's liability for death or personal injury resulting from the Seller's negligence or that of its employees, agents or sub-contractors

## 9. Insolvency of Buyer

If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods shall become payable immediately.

## 10. Legal

- 10.1 This contract will be governed by and construed in accordance with English Law and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.
- 10.2 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.
- 10.3 The failure by either party to enforce at any time or for any period any one or more of the Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions of this Agreement.
- 10.4 Force Majeure
  - 10.4.1 The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may without liability on its part, terminate the contract or any part of it.
- 10.5 These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties.