

STANDARD TERMS AND CONDITIONS OF SUPPLY

1 Definitions



In these Conditions and the Contract, the following expressions shall have the meanings set out below unless the context requires otherwise:

- “Company,” “our,” “us” and “we”** means H&T Waterbury
- “Conditions”** means the terms and conditions of supply set out in this document (as we may update them from time to time), together with any Special Conditions;
- “Contract”** means the contract between the Customer and the Company for the sale and purchase of the Goods upon and subject to the terms set out in any Order, the Conditions and Special Conditions, if applicable;
- “Customer” and “You”** means the company or person whose order for the Goods is accepted by the Company;
- “Goods”** means any Goods agreed in the Contract to be supplied to the Customer by the Company (including any part of them or any parts for them) and including any services to be provided in connection with or in addition to the supply of the Goods ;
- “Order”** means the Customer’s order for the supply of the Goods (in whatever form, including the Customer’s acceptance of a Company quotation) placed with the Company for its acceptance in accordance with the procedure set out in these Conditions;
- “Special Conditions”** means such additional conditions (if any) as are agreed in writing between the parties from time to time; and
- “Working Day”** means a day, such as when banks are open for business, such as a day other than a Saturday, Sunday or public holiday.

- ## 2 General
- A. Each Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. No Order shall be deemed to be accepted by the Company (and no Contract shall have come into existence and be binding on either of us) until the earlier of (i) the Company’s issuing of written acceptance of the Order or (ii) the Company commencing work on the manufacture / supply of the Goods which are the subject of the Order.
- B. Notwithstanding the above or any statement to the contrary in any documents supplied by or on behalf of the Customer, Contracts are made and Orders accepted by us only after the Customer’s credit has been established and only on the distinct understanding that these Conditions shall apply to the Contract to the exclusion of all others, unless otherwise mutually agreed upon by the parties in writing. In the case of the first transaction the Customer’s Order shall be accompanied by remittance or the usual trade and bank references of a satisfactory nature being furnished.
- C. For the avoidance of doubt, the Conditions are the only ones that will apply to a Contract and will prevail over any terms and conditions issued by or on behalf of the Customer. The Contract constitutes the entire agreement between the parties with respect to the transactions and matters contemplated herein and supersedes all previous communications, understandings and agreements between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- D. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations contained in the Company’s catalogues or brochures are issued or published solely to give an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force. Quotations issued by the Company are not offers capable of acceptance and are valid only for twenty (20) Working Days (or such other period of validity as the Company may expressly state in them).

3 Drawings

- A. Where specifications, designs, drawings, documentation, information or other materials (“**Customer Materials**”) are supplied by the Customer in respect of the Goods, the Company may use these to perform the Contract. The Customer Materials are assumed to be correct and we are entitled to rely on the accuracy of the same. The Company reserves the right to alter the Customer Materials to the extent necessary to comply with any applicable statutory or regulatory requirement.
- B. The Customer will indemnify the Company against any costs, losses, expenses or claims the Company may incur or suffer as a result of the Customer Materials supplied by the Customer (or the Company’s use of them) infringing the intellectual property rights or other rights of a third party.
- C. Except as agreed in writing to the contrary or as specifically set out herein, both parties expressly acknowledge that any intellectual property owned or controlled by either party is and shall remain the sole and exclusive property of that party and nothing in these Conditions or the Contract or the Special Conditions, if applicable gives either party any rights in the other party’s intellectual property rights or other similar rights.

4 Time for dispatch

- A. All dates / times specified by the Company for delivery of the Goods are made by us honestly and reasonably but shall be estimates only and while we will use commercially reasonable efforts to ensure that the time for delivery stated in the Contract is adhered to, time for delivery shall not be of the essence of the Contract. If no time / date is stated for delivery, delivery will be completed within a reasonable period of time. We shall be under no liability or responsibility in respect of loss or damage arising from delay in delivery or from a total or partial failure to deliver whether by the time stated for delivery or at all which arises from events beyond our reasonable control or from your breach of the Contract / failure to provide us with adequate information / instructions. If the Company fails to deliver the Goods at all, any liability it may have shall (subject always to the other provisions of these Conditions) be limited to the reasonable costs and expenses properly incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- B. Volume by dispatch
Where Goods are delivered by instalments then (at our sole option) each such delivery shall constitute a separate Contract. Delivery of Goods will reflect a component volume tolerance of -5% +5% from the actual volume stipulated by the Customer’s Order.

5 Place of delivery

- A. Unless otherwise agreed in writing, delivery of the Goods shall be made by us at the place stated in the Company’s written acceptance of the Order (which, in the absence of notification, is presumed to be the Customer’s normal place of business). Delivery shall be complete upon offloading the Goods from their transport at the place of delivery (if they are to be delivered by the Company or its nominated carrier) or upon making the Goods available to the Customer or its nominated carrier (if the Goods are to be collected or a carrier is nominated by the Customer). The cost of delivery to the Customer’s place of business is included in the quotation price unless separately stated in writing or otherwise agreed in writing. If the Customer wishes to alter the place of delivery after our acceptance of the Customer’s order then we reserve the right to refuse to accept such alteration or to charge for additional delivery costs arising from such alteration.
- B. If the Customer fails to accept or take delivery of the Goods on the delivery date then, except where such failure or delay is caused by circumstances beyond its reasonable control or by the Company’s failure to comply with its obligations under the Contract in respect of the Goods, (i) delivery shall be deemed to be complete on the next Working Day and (ii) the Company may (at its option) continue to store the Goods until actual delivery / collection and charge the Customer for all related costs of doing so (including insurance) or sell the Goods at the best price it can obtain and account to the Customer for the proceeds of such sale once the Company’s expenses of storing and selling the Goods have been deducted.

6 Tests

– The Goods are submitted to our standard inspection procedure at our works before dispatch. If special tests in the Customer’s presence have been agreed as part of the Contract, such tests must be carried at our place of business unless the Contract provides otherwise. If the Contract provides that special tests are to be carried out in the presence of the Customer we shall give to the Customer notice in writing of our being ready to proceed with such tests. If the Customer does not make itself available to attend such tests within seven (7) days after the date of our notice we reserve the right to proceed with the tests in the Customer’s absence and in the event of our doing so the Customer shall be deemed to have been present during such tests.

7Limitation of Liability

- A. The following provisions (together with the provisions of clause 4.A above) set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (i) any breach of the Conditions and / or the Contract;
 - (ii) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- B. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEGRATION, ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.
- C. Nothing in these Conditions excludes or limits the liability of the Company:
- (i) for death or personal injury caused by the Company's negligence;
 - (ii) for fraud or fraudulent misrepresentation; or
 - (iii) for any other matter in respect of which it would be illegal for the Company to exclude or limit its liability.
- D. Subject to clauses 7.B and 7.C:
- (i) the Company shall under no circumstances whatever be liable to the Customer (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise in each case whether direct or indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
 - (ii) subject to clause 7.D(i) above, the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract (or performance or contemplated performance) shall be limited to the price of the Goods to be supplied under the Contract.
- E. Unless otherwise agreed between the parties in writing (for example, but without limitation, as part of a product-specific specification agreed by the Company in writing), or defined in a H&T Battery Component General Quality Specification, batches of the Goods supplied by the Company will conform with regard to functional manufacturing defects. Notwithstanding the provisions of this clause 7, the Company shall (as the Customer's sole remedy) make good any defects in Goods of its own manufacture which result in them failing to meet this specific standard provided always that such defects arise solely from faulty workmanship and that such defects are notified to us within three (3) calendar months from the date of delivery of the Goods to the Customer.
- F. For the avoidance of doubt, nothing in this clause 7 shall obligate the Company to make good defects in Goods which were not manufactured by the Company or which were manufactured by the Company to drawings or specifications provided by the Customer.

8Prices and payment

- A. The price of the Goods shall be the Company's quoted price or the price stated or the quarterly price referred to in the Company's written acceptance of the Order (which shall prevail over the quoted price (if any)). If no price is quoted or referred to, the price for the Goods shall be set out in the Company's quarterly price list as of the date of delivery of the Goods.
- B. The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the costs to the Company and additional charges and all costs which are due to any change of delivery dates, quantities, applicable tariffs, taxes or specifications for the Goods requested by the Customer or any delay caused by an instruction of the Customer or failure of the Customer to provide the Company with adequate materials, information or instructions or any failure by the Customer to deliver materials for the use of the Company in supplying the Goods at the times and in the quantities required by the Company.
- C. The Company may invoice the Customer for the price of the Goods supplied under each Contract on or at any time after their delivery. Payment for Goods supplied is due in full and in cleared funds within thirty (30) days of the date of invoice, i.e. not 30 days from the end of the month unless otherwise agreed by the Company in writing. Time for settlement of the Company's invoices shall be of the essence of the Contract.
- D. Payment for all Goods supplied under the Contract shall be made in full upon the due date without any set off or counterclaim of any kind. The existence of any defect in Goods supplied shall not entitle the Customer to withhold payment under the Contract in whole or in part. The Customer's rights and remedies in respect of any such defect are limited to those set out in the immediately preceding clause 7.E.
- D. In respect of accounts which are overdue for payment the Company reserves the right (at its sole discretion) to (i) charge interest at a rate of two per cent (2%) per annum over the Prime Rate as published in The Wall Street Journal in force from time to time (or, if such rate is no longer published, a comparable replacement rate), (ii) refuse to accept any further Orders from the Customer and / or
- (iii) suspend further deliveries of the Goods under this or any other contract with the Customer.
- E. The Company shall be entitled to charge the amount of any tax payable whether or not included on the quotation or invoice.

9Packing

- A. Except in the case of shipment abroad, the costs associated with shipments are invoiced to the Customer together with the Goods. For other shipments the costs will be defined as per the terms negotiated or agreed to by both parties.
- B. The Company shall not include a cost for the packaging materials in the event the packing and or cartons are provided by the Customer. Freight for return of Customer packaging remains the responsibility of the Customer. Cost associated with transport which are prepaid by the Company shall be paid within ten (10) working days upon receipt by the Customer.
- B. For the avoidance of doubt:
- (i) the Company owned packaging and cartons shall be returnable to the Company unless otherwise defined by the Company's invoice
 - (ii) the Customer will be charged in the event the reusable Company owned packaging is not returned

10 Tools etc

Unless specifically agreed to the contrary, any charge made for tools covers part tool costs only and such tools will belong to the Company and will be maintained at our expense during the period of the Contract. In accordance with normal trade practice such tools will be stored at our expense for six (6) months from date of the Contract for possible use against further contracts, and we give no guarantee concerning the useful life of any tool beyond the period of the Contract. Where tools are provided outright we accept no responsibility for the repair and maintenance thereto or for any damage sustained during the process of manufacture and reserve the right to make a charge to the Customer for any upkeep work if and when it becomes necessary. All tooling will be considered to belong to the Company unless otherwise identified in writing.

11 Arbitration

If at any time any question, dispute or difference whatever shall arise between you and ourselves upon, in relation to, or in connection with the Contract either of us may give the other notice in writing of the existence of such question, dispute, or difference, and the same shall be referred to binding arbitration administered by the American Arbitration Association ("**AAA**") in accordance with its Commercial Arbitration Rules then in effect. The arbitration shall be conducted by a single arbitrator mutually agreed upon by the parties, or if the parties cannot agree, selected in accordance with AAA procedures. The arbitration shall be held in a location determined by the Company, and the arbitrator's decision shall be final and binding upon the parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

12 Risk and Retention of Title

- A. The risk of loss of or damage to the Goods shall pass to the Customer on completion of their delivery to the Customer in accordance with these Conditions. Where delivery is by a carrier appointed by the Customer, delivery to such carrier is to be evidenced by the Customer's (or the Customer's agent's) signature on the Company's delivery note.
- B. Notwithstanding clause 12A above and the passing of risk, the Goods delivered by the Company under the Contract shall remain the sole and absolute property of the Company until the Customer has paid in full and in cleared funds the price of the Goods (which shall include the price of all other goods agreed to be sold by the Company to the Customer for which payment is then due) including any sales tax and interest thereon.
- C. Until property in the Goods passes to the Customer in accordance with clause 12B above the Customer shall hold the Goods on a fiduciary basis as bailee for the Company. The Customer shall store the Goods (at no cost to the Company) separately from all other Goods in its possession and marked in such a way as they are clearly identified as the Company's property and insured appropriately to their full value.
- D. Notwithstanding that the Goods (or any of them) remain the property of the Company, the Customer may sell or use the Goods in the ordinary course of the Customer's business, provided that: (i) any such sale shall be at full market value; and (ii) the Customer shall hold the proceeds of any such sale on trust for the Company in a separate identifiable account and shall not mix such proceeds with any other monies and such proceeds shall at all times be identifiable as the Company's money.
- E. Until such time as the property in the Goods passes from the Company, the Customer shall upon request deliver up to the Company such of the Goods that has not ceased to be in existence or not been resold. If the Customer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods (and the Customer will, as necessary, procure access to relevant third party premises for the Company for this purpose). On the making of such request the rights of the Customer under clause 12D shall cease.
- F. The Customer acknowledges that before entering into a Contract for the purchase of any Goods from us it has expressly represented and warranted that it is not insolvent and has not: (i) filed a voluntary petition in bankruptcy or been the subject of an involuntary petition in bankruptcy; (ii) made an assignment for the benefit of creditors; (iii) had a receiver, trustee, or custodian appointed over all or a substantial part of its assets; (iv) admitted in writing its inability to pay its debts as they become due; or (v) become aware of any circumstances that would permit the filing of a petition against it under any chapter of the U.S. Bankruptcy Code or the appointment of a receiver or trustee over its assets.
- G. The Customer's rights to possession of the Goods shall cease at whichever is the earliest of the following dates:
 - (i) on the expiration of the agreed period of credit, if any;
 - (ii) if the Customer is dissolved or liquidated, makes a general assignment for the benefit of its creditors, or files or has filed against it a petition in bankruptcy or has a receiver appointed for a substantial part of its assets

13 Termination

- A. In the event the Customer (i) breaches the Contract and, where the breach is capable of remedy, has failed to remedy such breach within thirty (30) days of notice requiring it to do so; and/or (ii) files a voluntary petition in bankruptcy, is the subject of an involuntary bankruptcy petition, makes an assignment for the benefit of creditors, has a receiver, trustee, or custodian appointed over all or a substantial part of its assets, admits in writing its inability to pay its debts as they become due, or the Company has reasonable cause to believe any such event is about to occur or is likely to occur in relation to the Customer; then, in either such case, the Company may upon sending written notice to the Customer terminate the Contract forthwith and suspend any further deliveries of the Goods and the Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- B. Company may terminate the Contract for convenience by providing Customer with thirty (30) days' prior written notice.
- C. Upon termination of the Contract for any reason the Customer shall immediately settle all of the Company's then outstanding invoices (and any un invoiced amounts may be immediately invoiced with such invoices being payable immediately upon receipt), and each party shall immediately return to the other all of that other party's property then in its possession or under its control. Neither party shall hold itself out as having further connection with the other following the expiry or termination of the Contract.

14 Notice

- A. All communications between the parties about the Contract shall be in writing and delivered by hand, sent by nationally recognized overnight courier, sent by certified mail (return receipt requested), or sent by email:
 - (i) (in case of communications to the Company) to its principal place of business or such changed address as shall be notified to the Customer by the Company; or
 - (ii) (in the case of the communications to the Customer) to the principal place of business of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- B. Communications shall be deemed to have been received:
 - (i) if sent by certified mail, five (2) Working Days after mailing (exclusive of the day of mailing); or
 - (ii) if delivered by hand, on the day of delivery; or
 - (iii) if sent by email on a Working Day prior to 4:00pm, at the time of transmission and otherwise on the next Working Day.

15 Law / jurisdiction

The Contract shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of laws principles. Any application for injunctive or other equitable relief permitted under clause 11 may be brought in the state or federal courts located in the State of Delaware, and each party irrevocably submits to the jurisdiction of such courts for that limited purpose and waives any objection to venue therein.

16 General

- A. The Company may at any time assign, transfer, grant a security interest in, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Customer may not do so without the prior written consent of the Company.
- B. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- C. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- D. Except as set out in these Conditions, no variation, modification or amendment of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.
- E. The parties to the Contract do not intend that any terms of the Contract shall be enforceable by any person that is not a party to it. There are no third-party

beneficiaries to the Contract.

- F. The Company shall not be liable for any delay in or failure to perform the Contract for any reason beyond its reasonable control such as (but without limitation) strikes, lock-outs or other labor disputes (whether involving the workforce of the Company or any other party), shortage of labor or materials, failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, epidemic, or default of suppliers or subcontractors, provided that the Company notifies the Customer of the cause for the likely delay or failure and uses commercially reasonable efforts to mitigate its effects as soon as reasonably possible.
- G. Each party shall keep confidential all information which it has obtained or acquired in relation to the business, affairs, products or services of the other party whether pursuant to, in contemplation of or as a consequence of the performance of the Contract and shall not use or disclose any of the same without the other party's prior written consent except (i) as necessary to perform its obligations hereunder or as may be required of it by law (ii) as may be required of it by law, regulation, or order of a court or governmental authority of competent jurisdiction (provided that the disclosing party, to the extent legally permitted, gives the other party prompt written notice of such requirement so as to allow the other party to seek a protective order or other appropriate remedy); (iii) to the extent that such information is or becomes publicly available other than through a breach of the Contract; (iv) to the extent that such information was already known to the receiving party at the time of disclosure, as evidenced by written records predating such disclosure; (v) to the extent that such information is independently developed by the receiving party without reference to or use of the other party's confidential information; or (vi) to the extent that such information is received by the receiving party from a third party who is not, to the receiving party's knowledge, bound by any obligation of confidentiality in respect of such information..